

Clearinghouse Rule 19-141

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

The Wisconsin Department of Revenue proposes an order to: **repeal** Tax 1.13 (3) (a) and (b), 1.17, 2.32 (2) (a) 7. (Note), 2.395, 2.61 (7) (h) 1. and 2., 2.92 (3) (e) (Note 1), 2.98 (2) (b) (Note 1), (Note 2), and (Note 3), and 14.03 (4) (b) 23.; **amend** Tax 1.12 (9) (a) 1. (Note), 1.13 (1) (b) and (4) (a) and (b), 2.01, 2.03 (3) (b) 2. a. (Note), 2.04 (2) (d) (Note) and (dm) 1. (Note), (3), (4) (c) and (e), (5), (6) (a), (b), and (c) 1. (Note), (7), and (8) (b) 1. (Note) and (c) 2. (Note), 2.07 (2) (g) (Note), 2.08 (3) (b), (d) 1. (Note), and (e) 2. (Note), 2.105 (4) (b), 2.12 (3) (c), 2.30 (2) (Example), 2.32 (2) (a) 1., 2., 3., 4., 5., and 6., (b) 1., 2., 3., 4., 5., 6., 7., and 8., (c) 1., 2., 3., 4., 5., and 6., and (d) 1., 2., 3., 4., 5., and 6., 2.39 (6) (f) and (h), 2.49 (2) (hm) and (4) (x) 1. b. and c., 2.61 (4) (b) 1. and 4., (6) (a) 3., and (7) (h), 2.62 (2) (d) 1., 2.64 (2) (b) 7., (c), and (e) 3., 2.67 (2) (b) 2. (Note), 2.87 (1) (a), 2.88 (3) (a) and (5) (Note 4), 2.89 (4) (b), (c), and (d), 2.935 (1) (a), 2.95 (5) (Example), 2.955 (2) (a) and (b), (4) (intro), (b) 2. and 3., (c), and (d), and (5) (Example), and 2.96 (1) (a); and **create** Tax 1.13 (4) (c), 2.08 (3) (ci), 2.88 (3) (d), 2.955 (2m), 14.01 (2) (am), and 14.03 (4) (c) 10.; **relating to** income and franchise tax provisions.

The scope statement for this rule, SS 103-18, was approved by the Governor on August 27, 2018, published in Register No. 753A1 on September 4, 2018, and approved by the Secretary of Revenue on September 20, 2018.

Analysis by the Department of Revenue

Statutes interpreted: Tax 1.12 – ss. 71.01 (8r), 71.255 (7) (b), 71.42 (3m), 71.63 (1m) and (5m), 71.65 (3) (a), 73.029, 77.58 (1m), 77.61 (14, 77.96 (5m), 78.12 (5), 78.55 (5m), 139.01 (5m), 139.30 (8m), and 139.75 (5m), 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 1.17 – s. 146.98, Stats.

Tax 2.01 – s. 71.02, Stats.

Tax 2.03 – ss. 71.24 (1), (1m), and (3), 71.255 (1) (b) and (7), 71.365 (4) and (5), 71.44 (1) (a) and (c) and (1m), and 71.80 (18), 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), 71.72, 71.738 (2m), 71.74 (4), and 71.80 (20), Stats.

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

Tax 2.08 – ss. 71.01 (5g), 71.03 (2), 71.20 (1), 71.55 (3), 71.738 (2m), and 71.80 (18), 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 2.30 – ss. 71.05 (12) (a), (b), and (c), (15), (16), (17), and (18) and 71.04 (1) (a), Stats.

Tax 2.32 – subch. VII of ch. 77, Stats.

Tax 2.39 – ss. 71.04 (4), (4m), (5), (6), (7), (10), and (11), 71.25 (5), (6), (6m), (7), (8), (9), (11), and (15), and 71.255 (5), Stats.

Tax 2.395 – s. 71.25 (14), Stats.

Tax 2.49 – ss. 71.04 (4) (e), (8) (c), and (11) and 71.25 (6) (e), (10) (c), and (12)

Tax 2.61 – s. 71.255, Stats.

Tax 2.62 – s. 71.255 (1) (n), Stats.

Tax 2.64 – s. 71.255 (5) (b), Stats.

Tax 2.67 – ss. 71.24 (1), (1m), and (7), 71.255 (1) (b), (7) (b), (8), and (9), 71.44 (1), (1m), and (3), 71.77, 71.82, and 71.83, Stats.

Tax 2.87 – ss. 71.255 (7) (b) and 71.82 (2) (b), Stats.

Tax 2.88 – ss. 71.03 (7), 71.07 (3q), (3w), (3wm), and (3y), 71.24 (7), 71.28 (3q), (3w), (3wm), and (3y), 71.44 (3), 71.82 (1) and (2) (a), 71.47 (3q) (3w), and (3y), 71.55 (4), and 71.90 (1), Stats.

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

Tax 2.92 – ss. 71.66 and 71.83 (1) (a) 5. and (b) 4. and (2) (a) 5., Stats.

Tax 2.935 – s. 71.82 (2) (d), Stats.

Tax 2.95 – ss. 71.01 (6) and 71.04 (1) (a), Stats.

Tax 2.955 – s. 71.07 (7), Stats.

Tax 2.96 – ss. 71.24 (7), 71.255 (7), and 71.44 (3), Stats.

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

Tax 14.01 – s. 71.52 (1d), Stats.

Tax 14.03 – s. 71.52 (5) and (6), Stats.

Statutory authority: ss. 71.05 (7) (g) 2., 71.25 (9) (g) 2., 71.80 (1) (c), and 227.11 (2) (a), Stats.

Explanation of agency authority: Under ss. 71.05 (7) (g) 2., and 71.25 (9) (g) 2., Stats., the department may promulgate rules relating to situs of income; allocation and apportionment.

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 227.11 (2) (a), Stats., provides “[e]ach 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...”

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

Plain language analysis: Due to various Wisconsin acts and other technical corrections, updates to Chapters Tax 1, 2, and 14 are needed relating to the following:

- Update email and website addresses.
- Update procedures relating to a revised power of attorney form and to add Streamlined Sales Tax Form F0023 as an alternate form available.
- Reflect the repeal of sec. 146.98, Stats., as a result of 2017 Wis. Act 59 related to the ambulatory surgical center assessment.
- Remove reference to an obsolete form.
- Update due dates of forms for rents and royalties and electronic filing requirements as changed in secs. 71.70 and 71.80, Stats., as a result of 2017 Wis. Act 59.
- Update the address for where to file forms and remove a reference to "Tax Return Guidelines."
- Change the extension period to 30 days per sec. 71.73, Stats., as a result of 2017 Wis. Act 59.
- Update when an information return should be filed with Wisconsin.
- Update an obsolete reference to the health insurance credit for purposes of claiming the earned income credit.
- Include Form PW-1 in the list of returns that are required to be filed electronically. This form is filed by trusts, partnerships, and tax-option (S) corporations that are required to withhold tax on Wisconsin income that must be reported by nonresidents. Section 71.738(2m), Wis. Stats., provides the authority for the department to prescribe the method for filing returns with the department. The requirement to electronically file started in 2018, as described in Wisconsin Tax Bulletin 200.
- Reference statutory limitations, as stated in sec. 71.80 (25), Stats., related to net business and net operating losses as reflected in 2017 Wis. Act 59.
- Update date references to the Internal Revenue Code (IRC).
- Remove line references to forms.
- Include exception for broadcaster's gross receipts and updating sourcing of sales of services as provided in secs. 71.04 (7) and 71.25 (9), Stats., as a result of 2017 Wis. Act 59, and to correct a reference.
- Repeal s. Tax 2.395 as the alternative method of apportionment was only available prior to January 1, 2000.

- Replace obsolete reference to the IRC and reflect the reference to the IRC is the one in effect for federal tax purposes.
- Replace "Delinquent Tax Collection System" with "Compliance Bureau."
- Reflect that no interest is paid on certain WEDC refunds as provided secs. 71.07, 71.28, and 71.47, Stats., as a result of Wis. Act 59.
- Update due date of installment payments for corporations and extensions of time to file corporation returns as provided in secs. 71.29 and 71.44, Stats., 2017 Wis. Act 2.
- Reflect obtaining Forms WT-4 and WT-4A online.
- Update years.
- Add limitation on credit as provided in sec. 71.07 (7), Stats., as a result of 2017 Wis. Act 59.
- Repeal s. Tax 2.98 (2) (b) (Note 1), (Note 2), and (Note 3) related to disasters occurring prior to 1987.
- Reference the definition of disqualified loss in s. 71.52(1e), Stats, as a result of 2017 Wis. Act 59.
- Repeal s. Tax 14.03 (4) (b) 23. This subdivision was renumbered to 14.03 (4) (c) in CR 00-16. The original subdivision was not deleted.
- Add disqualified losses as provided in sec. 71.52(1e), Stats., as a result of 2017 Wis. Act 59.

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: 2017 Wisconsin Act 2 and 59 have made changes to Wisconsin's income and franchise tax laws. The department has created this proposed rule order to reflect these statutory changes, as well as provide needed clarification and correction as described above. 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.

Jen Chadwick
Department of Revenue
Mail Stop 6-40
2135 Rimrock Road
P.O. Box 8933
Madison, WI 53708-8933
jennifer.chadwick@wisconsin.gov

SECTION 1. Tax 1.12 (9) (a) 1. (Note) and 1.13 (1) (b) are amended to read:

Note: Form EFT-102 should be e-mailed to ~~DORWaiverRequest@revenue.wi.gov~~ DORWaiverRequest@wisconsin.gov, faxed to (608) 267-1030, or addressed to Mandate Waiver Request, Wisconsin Department of Revenue, Mail Stop 5-77, PO Box 8949, Madison, WI 53708-8949. Form EFT-102 may be obtained at <http://www.revenue.wi.gov/html/formpub.html> ~~https://www.revenue.wi.gov/Pages/html/formpub.aspx~~, under either ~~"Tax Return Information"~~ or ~~"Tax Return Guidelines: Tax Return Information."~~

(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, 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, and unclaimed property matters.

SECTION 2. Tax 1.13 (3) (a) and (b) are repealed.

SECTION 3. Tax 1.13 (4) (a) and (b) are amended to read:

(a) Form A-222. ~~Wisconsin's Power power of attorney forms form, Form A-222, are~~ is available from the Wisconsin department of revenue's web site or from any Wisconsin department of revenue office. ~~The Wisconsin form, Form A-222, is similar to the federal power of attorney form, Form 2848.~~

(b) Alternate Form. Use of the Wisconsin power of attorney form is not mandatory. However, the department prefers that this form or another similar form be used. ~~The Wisconsin power of attorney form or substitute form shall clearly express the scope of the authority granted the taxpayer's representative, the Wisconsin tax matters, e.g., income, sales, or franchise tax, covered and the tax year or period to which it relates.~~ An alternative form may be used, but must include the following:

1. Name of representative

2. Clear description of the scope of authority granted to the representative

3. Notarized signature of the taxpayer, except federal Forms 2848 and 8655, SSTGB Form F0023, and other forms approved by the department do not require the signature to be notarized

SECTION 4. Tax 1.13 (4) (c) is created to read:

(c) The Wisconsin power of attorney form or substitute form shall clearly express the scope of the authority granted the taxpayer's representative and the Wisconsin matter covered (e.g., income, sales, or franchise tax or unclaimed property).

SECTION 5. Tax 1.17 is repealed.

SECTION 6. Tax 2.01 is amended to read:

Residence. Individuals claiming a change of residence, i.e., domicile, from Wisconsin to another state shall file ~~form 1-827, "Residence Questionnaire", or the~~ "Residence Questionnaire" which is a part of the 1NPR income tax form, with the Wisconsin department of revenue by attaching it to their Wisconsin income tax return for the year they claim to have changed residence, and shall furnish other information the department may require.

SECTION 7. Tax 2.03 (3) (b) 2. a. (Note), 2.04 (2) (d) (Note) and (dm) 1. (Note), (3), (4) (c) and (e), (5), (6) (a), (b), and (c) 1. (Note), (7), and (8) (b) 1. (Note) and (c) 2. (Note) are amended to read:

2.03 (3) (b) 2. a. **Note:** Form EFT-102 should be e-mailed to ~~DORWaiverRequest@revenue.wi.gov~~DORWaiverRequest@wisconsin.gov, faxed to (608) 267-1030, or addressed to Mandate Waiver Request, Wisconsin Department of Revenue, Mail Stop 5-77, PO Box 8949, Madison, WI 53708-8949. Form EFT-102 may be obtained at ~~http://www.revenue.wi.gov/html/formpub.html~~https://www.revenue.wi.gov/Pages/html/formpub.aspx, under either ~~"Tax Return Information" or "Tax Return Guidelines."~~"Tax Return Information."

2.04 (2) (d) **Note:** Forms W-2, 1099-R, 9b, and 1099 that are not required to be filed electronically may be delivered in person to the Department of Revenue at 2135 Rimrock Road, Madison, Wisconsin or mailed to the department. Forms ~~9b or substitute forms~~ filed on paper may be mailed to Wisconsin Department of Revenue, PO Box ~~89328920, Madison, WI 53708-8932~~53708-8920. Other forms may be mailed to ~~Wisconsin Department of Revenue, PO Box 8920, Madison, WI 53708-8920.~~

(dm) 1. **Note:** Form EFT-102 should be e-mailed to ~~DORWaiverRequest@revenue.wi.gov~~DORWaiverRequest@wisconsin.gov, faxed to (608) 267-1030, or addressed to Mandate Waiver Request, Wisconsin Department of Revenue, Mail Stop 5-77, PO Box 8949, Madison, WI 53708-8949. Form EFT-102 may be obtained at ~~http://www.revenue.wi.gov/html/formpub.html~~https://www.revenue.wi.gov/Pages/html/formpub.aspx, under either ~~"Tax Return Information" or "Tax Return Guidelines."~~"Tax Return Information."

(3) RENTS AND ROYALTIES. Under ss. 71.70 and 71.80 (20), Stats., except as provided in par. (d), all persons making payments of rents and royalties of \$600 or more to individuals who are residents of Wisconsin, regardless of where the property is

located, and to nonresident individuals if the property is located in Wisconsin, shall file with the department, on ~~form Form~~ 9b or an approved substitute form, a statement of payments made in the preceding calendar year. As provided in sub. (6), the department may require such statement be filed electronically. The following shall also apply with respect to rents and royalties:

(a) A copy of federal ~~form Form~~ 1099-MISC may be filed in lieu of Wisconsin ~~form Form~~ 9b.

(b) Corporations shall file the statement with the department by ~~March 15~~January 31 and payers other than corporations shall file by ~~April 15~~January 31.

Note: Forms not required to be filed electronically may be delivered in person to the Department of Revenue at 2135 Rimrock Road, Madison, Wisconsin or mailed to Wisconsin Department of Revenue, PO Box ~~89328920~~, Madison, WI ~~53708-8932~~53708-8920.

(c) ~~No~~ A 30 day extension of time for filing ~~forms Forms~~ 9b or substitute forms to report payments of rents or royalties may be allowed.

(d) The requirement to file ~~form Form~~ 9b or a substitute form does not apply to persons other than corporations who do not deduct the payments in determining Wisconsin taxable income.

(4) (c) The winnings required to be reported in pars. (a) and (b) shall be reported on federal ~~form Form~~ W-2G or on an approved substitute form. As provided in sub. (6), the department may require such form be filed electronically.

(e) No extension of time for filing ~~forms Forms~~ W-2G or substitute forms to report payments of lottery prize winnings or pari-mutuel wager winnings may be allowed.

(5) DISALLOWANCE OF DEDUCTIONS. Items to be reported on ~~forms Forms~~ W-2, 1099-R, 9b or substitute forms may be disallowed as deductions from gross income if not properly reported.

(6) ELECTRONIC FILING REQUIREMENT.

(a) Under s. 71.80 (20), Stats., if a person is required to file ~~5010~~ or more wage statements or ~~5010~~ or more of any one type of information return with the department, the person shall file the statements or the returns electronically, by means prescribed by the department.

(b) If a payer participates in the combined federal/state filing program for ~~forms Forms~~ 1099, the department shall waive the requirement to file those ~~forms Forms~~ 1099 or comparable information returns electronically, unless the form reports Wisconsin withholding.

(c) 1. **Note:** Form EFT-102 should be e-mailed to DORWaiverRequest@revenue.wi.gov DORWaiverRequest@wisconsin.gov, faxed to (608) 267-1030, or addressed to Mandate Waiver Request, Wisconsin Department of Revenue, Mail Stop 5-77, PO Box 8949, Madison, WI 53708-8949. Form EFT-102 may be obtained at <http://www.revenue.wi.gov/html/formpub.html> <https://www.revenue.wi.gov/Pages/html/for>

mpub.aspx, under either "~~Tax Return Information~~" or "~~Tax Return Guidelines~~." Tax Return Information."

(7) COMBINED FILING PROGRAM. Payers who participate in the combined federal/state filing program with the internal revenue service and report to the internal revenue service items which are required to be filed on Wisconsin ~~form~~ Form 9b or a substitute form, are not required to file separate information returns for those items with the department of revenue, unless the form reports Wisconsin withholding.

(8) (b) 1. **Note:** Form EFT-102 should be e-mailed to ~~DORWaiverRequest@revenue.wi.gov~~ DORWaiverRequest@wisconsin.gov, faxed to (608) 267-1030, or addressed to Mandate Waiver Request, Wisconsin Department of Revenue, Mail Stop 5-77, PO Box 8949, Madison, WI 53708-8949. Form EFT-102 may be obtained at <http://www.revenue.wi.gov/html/formpub.html> ~~<https://www.revenue.wi.gov/Pages/html/formpub.aspx>~~, under either "~~Tax Return Information~~" or "~~Tax Return Guidelines~~." Tax Return Information."

(c) 2. **Note:** The requirement to file Wisconsin wage statements or information returns electronically for persons required to file ~~50~~ 10 or more wage statements or ~~50~~ 10 or more of any one type of information return with the department is effective January 1, ~~2010~~ 2018, as a result of the ~~repeal and recreation~~ amendment of s. 71.80 (20), Stats., by ~~2009~~ 2017 Wis. Act ~~285~~ 59.

SECTION 8. Tax 2.07 (2) (g) (Note) and 2.08 (3) (b) are amended to read:

2.07 (2) (g) **Note:** The federal earned income tax credit, provided under section 32 of the Internal Revenue Code, is available to eligible individuals and married couples filing a joint income tax return, ~~who have at least one qualifying child living with them.~~ The federal credit consists of ~~three parts, as follows:~~ is

~~A basic credit, computed based on the amount of adjusted gross income or earned income, and whether the individual or couple had no qualifying child, one qualifying child, or two or more qualifying children.~~

~~A health insurance credit, computed based on the amount of adjusted gross income or earned income, and the amount paid for health insurance that covered at least one qualifying child.~~

~~An extra credit for a child born during the taxable year, computed based on adjusted gross income or earned income.~~

2.08 (3) (b) Except as provided in pars. (c) and (d), the department may require a tax return preparer or tax preparation firm that prepared ~~the threshold number, as described in subs. 1. to 3., of 50 or more~~ Wisconsin individual income tax returns for the prior taxable year, to file individual income tax returns prepared by that tax return preparer or tax preparation firm electronically. The department shall notify tax return preparers and tax preparation firms by October 1 of any year of the requirement to file electronically. The requirement to file returns electronically shall be effective beginning January 1 of the year following notification. ~~The threshold number of returns prepared in the prior taxable year is as follows:~~

~~1. For taxable year 2002, 200 or more returns.~~

~~2. For taxable years 2003 through 2009, 100 or more returns.~~

~~3. For taxable year 2010 and thereafter, 50 or more returns.~~

SECTION 9. Tax 2.08 (3) (ci) is created to read:

(ci) Except as provided in par. (d), the department may require the nonresident income or franchise tax withholding return filed by a pass-through entity be filed electronically. The department shall provide notification at least 90 days prior to the due date of the first income or franchise tax withholding return required to be filed electronically of the requirement to file electronically.

SECTION 10. Tax 2.08 (3) (d) 1. (Note) and (e) 2. (Note) are amended to read:

Note: Form EFT-102 should be e-mailed to ~~DORWaiverRequest@revenue.wi.gov~~ DORWaiverRequest@wisconsin.gov, faxed to (608) 267-1030, or addressed to Mandate Waiver Request, Wisconsin Department of Revenue, Mail Stop 5-77, PO Box 8949, Madison WI 53708-8949. Form EFT-102 may be obtained at <http://www.revenue.wi.gov/html/formpub.html> ~~https://www.revenue.wi.gov/Pages/html/formpub.aspx~~, under either "~~Tax Return Information~~" or "~~Tax Return Guidelines~~." Tax Return Information.

Note: Section Tax 2.08 interprets ss. 71.01 (5g), 71.03 (2), 71.20 (1), 71.55 (3), 71.738 (2m), and 71.80 (18), Stats.

SECTION 11. Tax 2.105 (4) (b) is amended to read:

(b) *Amended returns.* If a taxpayer files an amended federal tax return and the changes on the amended federal tax return affect the amount of Wisconsin net franchise or income tax or economic development surcharge payable, the amount of a Wisconsin credit or a Wisconsin net operating loss, net business loss or capital loss carried forward, the taxpayer shall file with the department an amended Wisconsin return reflecting the same changes. A taxpayer filing an amended return with another state shall file an amended Wisconsin return if a credit has been allowed against Wisconsin taxes for taxes paid to that state and if the changes affect the amount of Wisconsin net franchise or income tax or economic development surcharge payable, the amount of a Wisconsin credit or a Wisconsin net operating loss, net business loss or capital loss carried forward. If the changes described in this paragraph relate to income, credits claimed or carried forward, net business losses or net business losses carried forward, capital losses or capital losses carried forward, or any other item that is required to be included in a combined report under s. 71.255 (1) (b), Stats., the designated agent of the combined group shall file an amended combined return. Changes to a net operating or business loss carryforward may not be made unless the change to the incurred loss was computed on a return that was filed within 4 years of the unextended due date for filing the original return for the taxable year in which the loss was incurred. Changes to a net operating or business loss carry-back may not be made unless the change to the loss is claimed within 4 years of the unextended due date for filing the original return for the taxable year to which the loss is carried back. The amended Wisconsin return shall be filed within 90 days after the date the amended return is filed with the internal revenue service or other state.

SECTION 12. Tax 2.12 (3) (c) is amended to read:

(c) An amended Wisconsin return shall be filed with the department if either an amended federal return is filed or an amended return is filed with another state for which a credit for taxes has been allowed against Wisconsin taxes, and the changes to the amended federal or other state return affect the amount of Wisconsin net franchise or income tax or economic development surcharge payable, a Wisconsin credit or a Wisconsin net operating loss, net business loss or capital loss carried forward. Changes to a net operating or business loss carryforward may not be made unless the change to the incurred loss was computed on a return that was filed within 4 years of the unextended due date for filing the original return for the taxable year in which the loss was incurred. Changes to a net operating or business loss carry-back may not be made unless the change to the loss is claimed within 4 years of the unextended due date for filing the original return for the taxable year to which the loss is carried back.

SECTION 13. Tax 2.30 (2) (Example) is amended to read:

Example: For taxable year ~~1988~~2017, "Internal Revenue Code" means the Internal Revenue Code in effect on December 31, ~~1987~~2016.

SECTION 14. Tax 2.32 (2) (a) 1., 2., 3., 4., 5. and 6. are amended to read:

- (a) 1. Gross receipts or sales reportable on ~~line 4e of federal form~~ Form 1120, U. S. corporation income tax return.
2. Gross dividends reportable on ~~line 4 of federal form~~ Form 1120.
3. Gross interest income reportable on ~~line 5 of federal form~~ Form 1120.
4. Gross rents reportable on ~~line 6 of federal form~~ Form 1120.
5. Gross royalties reportable on ~~line 7 of federal form~~ Form 1120.
6. The gross sales price from the disposition of capital assets and business assets includable in computing the net gain or loss on ~~lines 8 and 9 of federal form~~ Form 1120.

SECTION 15. Tax 2.32 (2) (a) 7. (Note) is repealed.

SECTION 16. Tax 2.32 (2) (b) 1., 2., 3., 4., 5., 6., 7., and 8., (c) 1., 2., 3., 4., 5., and 6., and (d) 1., 2., 3., 4., 5., and 6 are amended to read:

- (b) 1. Gross receipts or sales reportable on ~~line 4a of federal form~~ Form 990-T, exempt organization business income tax return.
2. The gross sales price from the disposition of capital assets and business assets includable in computing the gain or loss on ~~lines 4a and 4b of federal form~~ Form 990-T.
3. Gross rents includable in computing rent income on ~~line 6 of federal form~~ Form 990-T.
4. Gross income from unrelated debt-financed property includable in computing unrelated debt-financed income on ~~line 7 of federal form~~ Form 990-T.

5. Gross interest, annuities, royalties and rents from controlled organizations includable in computing those items of income on ~~line 8 of federal form Form~~ Form 990-T.

6. Gross investment income includable in computing investment income on ~~line 9 of federal form Form~~ Form 990-T.

7. Gross exploited exempt activity income includable in computing that item of income on ~~line 10 of federal form Form~~ Form 990-T.

8. Gross advertising income includable in computing advertising income on ~~line 11 of federal form Form~~ Form 990-T.

(c) 1. Gross premiums earned reportable on ~~lines 1 and 8 of schedule Schedule~~ Schedule A on federal ~~form Form~~ Form 1120-PC, U. S. property and casualty insurance company income tax return.

2. Gross dividends reportable on ~~line 2 of schedule Schedule~~ Schedule A, or ~~line 2 of schedule Schedule~~ Schedule B if applicable, ~~on of federal form Form~~ Form 1120-PC.

3. Gross interest income reportable on ~~line 3a of schedule Schedule~~ Schedule A, or ~~line 1a of schedule Schedule~~ Schedule B if applicable, ~~on of federal form Form~~ Form 1120-PC.

4. Gross rents reportable on ~~line 4 of schedule Schedule~~ Schedule A, or ~~line 3 of schedule Schedule~~ Schedule B if applicable, ~~on of federal form Form~~ Form 1120-PC.

5. Gross royalties reportable on ~~line 5 of schedule Schedule~~ Schedule A, or ~~line 4 of schedule Schedule~~ Schedule B if applicable, ~~on of federal form Form~~ Form 1120-PC.

6. The gross sales price from the disposition of capital assets and business assets includable in computing the gain or loss on ~~lines 6 and 7 of schedule Schedule~~ Schedule A, or ~~lines 5 and 7 of schedule Schedule~~ Schedule B if applicable, ~~on of federal form Form~~ Form 1120-PC.

(d) 1. Gross receipts or sales reportable on ~~line 1e of federal form Form~~ Form 1120S, U. S. corporation income tax return for an S corporation.

2. Gross rents includable in computing the income from real estate and other rental activities reportable on ~~lines 2 and 3a of schedule Schedule~~ Schedule K ~~on of federal form Form~~ Form 1120S.

3. Gross interest income reportable on ~~line 4 of schedule Schedule~~ Schedule K ~~on of federal form Form~~ Form 1120S.

4. Ordinary dividends reportable on ~~line 5a of schedule Schedule~~ Schedule K ~~on of federal form Form~~ Form 1120S.

5. Gross royalties includable in computing royalty income reportable on ~~line 6 of schedule Schedule~~ Schedule K ~~on of federal form Form~~ Form 1120S.

6. The gross sales price from the disposition of capital assets and business assets includable in computing the gain or loss on ~~line 4 of federal form Form~~ Form 1120S and ~~lines 7, 8a, and 9 of schedule Schedule~~ Schedule K ~~on of federal form Form~~ Form 1120S.

SECTION 17. Tax 2.39 (6) (f) and (h) are amended to read:

2.39 (6) (f) *Sales of services attributable to Wisconsin.* Sales of services are attributable to Wisconsin ~~if the benefit of the service is received in Wisconsin, as provided in ss. 71.04 (7) (dh) and 71.25 (9) (dh), Stats.~~

(h) Receipts from intangible property for taxable years beginning on or after January 1, 2009. For taxable years beginning on or after January 1, 2009, the amount includable in the numerator of the sales factor for gross receipts from the sale of, license of, or allowing use of intangible property in this state is determined as provided in ss. 71.04 (7) (dj) and (dk) and 71.25 (9) (dj) and (dk), Stats. For purposes of applying these paragraphs, excluding ss. 71.04 (7) (dj) 2. and 71.25 (9) (dj) 2m., the following rules apply:

SECTION 18. Tax 2.395 is repealed.

SECTION 19. Tax 2.49 (2) (hm) and (4) (x) 1. b. and c. are amended to read:

(hm) "Intangible property" has the same meaning as in s. Tax 2.39 (2) ~~(f)~~ (cm).

b. The service relates to ~~tangible personal property that is located in this state at the time that the service is received or~~ tangible personal property that is delivered directly or indirectly to customers in this state.

c. The service is ~~provided to~~ purchased by an individual who is physically present in this state at the time that the service is received.

SECTION 20. Tax 2.61 (4) (b) 1. and 4., (6) (a) 3., and (7) (h) are amended to read:

(4) (b) 1. For purposes of the water's edge rules in pars. (d) and (e), a corporation is an "80/20 corporation" if 80 percent or more of its worldwide gross income during the testing period is "active foreign business income" as defined in ~~section 861(e)(1)(B)~~ subchapter N of the Internal Revenue Code.

4. For purposes of this paragraph, a corporation's active foreign business income includes gross income attributed from subsidiary corporations as provided in ~~section 861(e)(1)(B)~~ subchapter N of the Internal Revenue Code, but only to the extent the gross income of the subsidiary corporations is derived from the combined group's unitary business.

(6) (a) 3. Add net capital gain includable in the combined unitary income, applying the loss limitation as described in par. (c) and using the federal basis of assets. Any differences between the federal and Wisconsin basis of assets, including basis differences that arise from the application of par. (f), are accounted for as Wisconsin modifications under subd. 6. The Wisconsin basis of a corporation's depreciable property for the first year the corporation becomes taxable in Wisconsin equals its federal basis as of the beginning of the taxable year in which the corporation becomes taxable in Wisconsin, as required under s. 71.265, Stats. The federal basis shall be computed under the Internal Revenue Code in effect for ~~Wisconsin~~ federal purposes as required under ss. 71.22 (4) and (4m), 71.42 (2), ~~and 71.26 (3) (y), and 71.98 (3),~~ Stats.

(7) (h) Alternative apportionment. A qualifying combined group may petition the department to use an alternative apportionment method, as provided in s. Tax 2.64.

SECTION 21. Tax 2.61 (7) (h) 1. and 2. are repealed.

SECTION 22. Tax 2.62 (2) (d) 1. is amended to read:

1. For any participant in the unitary business that is not a member of a commonly controlled group of corporations as provided in s. Tax 2.61 (3), the participant's income from the unitary business is generally apportioned in the manner provided by ss. Tax 2.39, ~~2.395~~, 2.45, 2.46, 2.465, 2.47, 2.475, 2.48, 2.49, 2.495, 2.50, or 2.502, as applicable. However, the participant may be required to apportion its income under the combined reporting rules provided in s. Tax 2.61 if certain conditions apply, as further explained in s. Tax 2.61 (2) (f).

SECTION 23. Tax 2.64 (2) (b) 7., (c), and (e) 3. are amended to read:

7. A calculation of each combined group member's tax liability for the first taxable year to which the petition applies and for the previous taxable year, similar to the calculations in subds. 5. and 6., computed as if each corporation were not a member of the combined group and using the method prescribed by ss. Tax 2.39, ~~2.395~~, 2.45, 2.46, 2.465, 2.47, 2.475, 2.48, 2.49, 2.495, 2.50, or 2.502, as applicable to each corporation.

(c) Limitation. The department may not grant a taxpayer's petition for an alternative apportionment method if the alternative method would result in a lower tax liability than the sum of the tax liabilities of the combined group members computed as if they were not members of a combined group and using the apportionment method prescribed by ss. Tax 2.39, ~~2.395~~, 2.45, 2.46, 2.465, 2.47, 2.475, 2.48, 2.49, 2.495, 2.50, or 2.502, as applicable to each corporation.

3. A calculation of each combined group member's tax liability for the taxable year included in the combined return computed as if each corporation were not a member of the combined group and using the apportionment method prescribed by ss. Tax 2.39, ~~2.395~~, 2.45, 2.46, 2.465, 2.47, 2.475, 2.48, 2.49, 2.495, 2.50, or 2.502, as applicable to each corporation.

SECTION 24. Tax 2.67 (2) (b) 2. (Note) is amended to read:

Note: Written requests should be e-mailed to ~~DORWaiverRequest@revenue.wi.gov~~ DORWaiverRequest@wisconsin.gov, faxed to (608) 267-1030, or addressed to Mandate Waiver Request, Wisconsin Department of Revenue, Mail Stop 5-77, P.O. Box 8949, Madison, WI 53708-8949.

SECTION 25. Tax 2.87 (1) (a) and 2.88 (3) (a) are amended to read:

2.87 (1) (a) Requests the reduction in writing, addressed to the Wisconsin Department of Revenue, ~~Delinquent Tax Collection System Compliance Bureau~~, P.O. Box 8901, Madison, WI 53708.

2.88 (3) (a) (a) Any refund of individual income or corporate franchise or income taxes shall include interest at the rate of 3% per year from the due date of the return to the date paid by the department, except as provided in pars. (b), ~~and (c)~~, and (d).

SECTION 26. Tax 2.88 (3) (d) is created to read:

(d) No interest may be allowed on refunds due to a tax credit issued under 71.07 (3q), (3w), (3wm), and (3y), 71.28 (3q), (3w), (3wm), and (3y), 71.47 (3q), (3w), and (3y), and subch. VIII of ch. 71.

SECTION 27. Tax 2.88 (5) (Note 4) and 2.89 (4) (b), (c), and (d) are amended to read:

2.88 (5) **Note:** Section Tax 2.88 interprets ss. 71.03 (7), 71.07 (3q), (3w), (3wm), and (3y), 71.24 (7), 71.28 (3q), (3w), (3wm), and (3y), 71.44 (3), 71.47 (3q), (3w), and (3y), 71.55 (4), 71.82 (1) and (2) (a), and 71.90 (1), Stats.

2.89 (4) (b) For periods of 4 to 6 months, the ~~3rd~~4th and last months of the taxable year.

(c) For periods of 7 to 9 months, the ~~3rd~~4th, 6th and last months of the taxable year.

(d) For periods of 10 to 11 months, the ~~3rd~~4th, 6th, 9th and last months of the taxable year.

SECTION 28. Tax 2.92 (3) (e) (Note 1) is repealed.

SECTION 29. Tax 2.935 (1) (a) is amended to read:

(a) Requests the reduction in writing, addressed to the Wisconsin Department of Revenue, ~~Delinquent Tax Collection System Compliance Bureau~~, P.O. Box 8901, Madison, WI 53708.

SECTION 30. Tax 2.95 (5) (Example) and 2.955 (2) (a) and (b) are amended to read:

2.95 (5) **Example:** In ~~1990~~2016 an Illinois resident sells Wisconsin real estate for \$140,000. The adjusted basis of the property is \$70,000 which results in a gross profit percentage of 50%. The seller receives a down payment of \$40,000 and an installment note of \$100,000 for the balance. In ~~1994~~2017, after receiving a \$60,000 payment on the principal plus interest of \$4,000, the installment obligation is sold for \$45,000. The seller's Wisconsin taxable income from these transactions is as follows:

| | | <u>Wisconsin Income</u> | |
|-------------------------------|------------------------------------|-----------------------------|-----------------|
| 1990 <u>2016</u> - | Selling price | \$140,000 | |
| | Wisconsin adjusted basis | <u>70,000</u> | |
| | Gross profit | <u>\$70,000</u> | |
| | Gross profit percent | 50% | |
| | Down payment received | \$40,000 | |
| | Profit reportable (50% x \$40,000) | 20,000 | <u>\$20,000</u> |
| | Total Wisconsin Income | | <u>\$20,000</u> |
| 1994 <u>2017</u> - | Payment on principal received | \$60,000 | |
| | Profit reportable (50% x \$60,000) | 30,000 | \$30,000 |
| | Interest received | 4,000 | -0- |

| | | |
|---|--------|-----------------|
| Sale of installment obligation: | | |
| Selling price | 45,000 | |
| Less basis – unpaid balance of \$40,000 less unpaid profit due of \$20,000 (\$40,000 x 50%) | 20,000 | |
| Gain on sale of installment obligation (\$45,000 – \$20,000) | 25,000 | 25,000 |
| Total Wisconsin Income | | <u>\$55,000</u> |

2.955 (2) (a) Except as provided in ~~sub-~~subs. (2m) and (3), an income tax credit may be claimed by a Wisconsin resident individual, estate, or trust for any net minimum tax or income tax paid to another state by the resident upon income of the individual, estate or trust taxable by that state.

(b) Except as provided in ~~sub-~~subs. (2m) and (3), an income tax credit may be claimed by a Wisconsin resident shareholder in a tax-option (S) corporation for any net minimum tax, income tax, or franchise tax paid by that shareholder to another state on or measured by income of the tax-option (S) corporation.

SECTION 31. Tax 2.955 (2m) is created to read:

(2m) LIMITATION. (a) The credit may only be allowed if the income taxed by the other state is also considered income for Wisconsin tax purposes.

(b) The credit may not exceed the net tax paid to Wisconsin on income that is taxable to both Wisconsin and the other state.

(c) The limitation in par. (b) does not apply to income that is taxable to both Wisconsin and to Minnesota, Iowa, Illinois, or Michigan.

SECTION 32. Tax 2.955 (4) (intro), (b) 2. and 3., (c), and (d) and (5) (Example) are amended to read:

(4) How to claim a credit. The amount of income tax credit claimed shall be entered on the line provided for net income tax paid to other states on Wisconsin income tax return ~~form-~~Form 1 or ~~form-~~Form 1NPR. The credit may not exceed the Wisconsin net tax. To support the credit claimed, the following information shall be attached to ~~form-~~Form 1 or ~~form-~~Form 1NPR:

2. If the corporation files a combined or composite return with that state on behalf of its shareholders who are nonresidents of that state and pays the tax on their proportionate share of the income earned there, attach to the Wisconsin income tax return either a copy of the Wisconsin ~~schedule-~~Schedule 5K-1 on which is shown the shareholder's share of tax paid to that state, or a letter as provided in par. (d).

3. If the corporation files a corporate income or franchise tax return with that state and pays tax on or measured by income earned there that is attributable to its shareholders who are nonresidents of that state, attach to the Wisconsin income tax return either a copy of the Wisconsin ~~schedule-~~Schedule 5K-1 on which is shown the shareholder's share of tax paid to that state, or a letter as provided in par. (d).

(c) For a Wisconsin resident shareholder in a tax-option (S) corporation, the federal subchapter S status of which is not recognized by the other state, if the corporation pays an income or franchise tax on or measured by the income earned there, attach to the Wisconsin income tax return either a copy of the Wisconsin ~~schedule~~ Schedule 5K-1 on which is shown the shareholder's share of tax paid to that state, or a letter as provided in par. (d).

(d) If the tax-option (S) corporation is not subject to Wisconsin's income or franchise tax, a Wisconsin resident shareholder shall attach to the Wisconsin income tax return a letter provided by the corporation in lieu of Wisconsin ~~schedule~~ Schedule 5K-1 as required in pars. (b) 2. and 3. and (c). The letter shall include a schedule showing the shareholder's proportionate share of the items of income taxable by that state, the adjusted gross income, and the net tax paid.

Example: A Wisconsin resident receives income of \$4,000 in ~~1992-2016~~ from rental property located in Iowa. The person files a ~~1992-2016~~ declaration of estimated tax of \$200 with Iowa, with \$150 of estimated tax payments being made in ~~1992-2016~~ and the fourth quarter payment of \$50 being made in January ~~1993-2017~~. The Iowa income of \$4,000 is reported as income on the ~~1992-2016~~ Iowa and Wisconsin returns. The ~~1992-2016~~ Iowa income tax return shows the following:

~~1992-2016~~ Iowa Return

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

The taxpayer may claim a credit for net income tax paid to other states of \$185 on the ~~1992-2016~~ Wisconsin return, even though a part of the tax was paid in ~~1993-2017~~.

SECTION 33. Tax 2.96 (1) (a) is amended to read:

(a) General. Except as provided in pars. (am) and (b), corporation franchise or income tax returns are due on or before the 15th day of the ~~3rd-4th~~ month following the close of a corporation's taxable year unless an extension of time for filing has been granted.

SECTION 34. Tax 2.98 (2) (b) (Note 1), (Note 2), and (Note 3) are repealed.

SECTION 35. Tax 14.01 (2) (am) is created to read:

(am) "Disqualified loss" has the meaning given in s. 71.52 (1e), Stats.

SECTION 36. Tax 14.03 (4) (b) 23. is repealed.

SECTION 37. Tax 14.03 (4) (c) 10. is created to read:

10. Disqualified losses.

SECTION 38. 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/166 – Tax 1,2,14 Update/Chapter Tax 1,2,14 Update 2017 Acts Proposed Order