

## Clearinghouse Rule 22-044

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

The Wisconsin Department of Revenue proposes an order to: **repeal** Tax 2.99, 4.53 (3) (Note 1), 4.54 (3) (b), 11.001 (2) (d), 11.63 (c) 1. and 2., 11.66 (3) (c)11.67 (3) (e) 2. (Note), and 11.68 (4) (fm); **consolidate, renumber, and amend** Tax 4.54 (3) (intro.) and (a); **amend** Tax 1.06, 1.13 (1) (b), 2.085 (3), 2.67 (2) (c) 4., 2.92 (2), 4.001 (2) (c) 1. (Note), 4.54 (2) (c), 7.001 (2) (c) 1. (Note), 8.001 (2) (c) 1. (Note), 8.03 (2) (Note), 9.001 (2) (c) 1. (Note), 9.70 (Title), (1), and (3) (a), (c), (d), (e), and (f), 11.001 (1), 11.001 (2) (e), 11.32 (4) (a) 2., 11.63 (2) (c), 11.66 (3) (intro.) and (d), 11.68 (13) (Title), (a), (c), (d), and (e), 11.84 (1) (c), and 14.03 (4) (b) 3. e.; **repeal and recreate** Tax 2.085 (1) and 2.92 (1); and **create** Tax 2.02 (11) (a) (Note) and 9.70 (2) (e); **relating to** income, franchise, excise, sales, and use tax provisions and affecting small business.

The scope statement for this rule, SS 057-21, was approved by the Governor on June 3, 2021, published in Register No. 786A3 on June 14, 2021, and approved by the Secretary of Revenue on August 12, 2021.

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

##### **Statutes interpreted:**

**Tax 1.06** – Federalization of the computation of Wisconsin gross income for individuals and fiduciaries was provided by Chapter 163, Laws of 1965, effective for taxable year 1965 and thereafter. Federalization of the computation of Wisconsin net income of a corporation was provided by 1987 Wis. Act 27, effective for taxable year 1987 and thereafter.

**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 2.085** – s. 71.75 (10), 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 2.92** – ss. 71.66 and 71.83 (1) (a) 5. and (b) 4. and (2) (a) 5., Stats.

**Tax 2.99** – ss. 71.07 (3n), 71.28 (3n), and 71.47 (3n), Stats.

**Tax 4.001** – ss. 78.005 (6m), 78.39 (4m), and 78.55 (2r), Stats.

**Tax 4.53** – ss. 78.40 (1), 78.47 and 78.49 (3), Stats.

**Tax 4.54** – ss. 78.11, 78.48 (9) and 78.57 (9), Stats.

**Tax 7.001** – s. 139.01 (2r), Stats.

**Tax 8.001** – s. 139.01 (2r), Stats.

**Tax 8.03** – s. 125.02 (23) and 125.06 (11m), Stats.

**Tax 9.001** – s. 139.30 (4m) and 139.75 (4m), Stats.

**Tax 9.70** – ss. 139.362 and 139.801, Stats.

**Tax 11.001** – subchs. III and V of ch. 77, Stats.

**Tax 11.32** – ss. 77.51 (12m) (a) (intro.) and 2., 3. and 4., (b) 1., 5., 7. and 8. and (c), (15a), (15b) (a) (intro.), 2., 3., and 4., (b) 1., 5., 7. and 8. and (c), 77.54 (8), 77.585 (7), and 77.61 (3m), Stats.

**Tax 11.63** – ss. 77.51 (7i), (7j), (11d), (13), (14), and (17), 77.52 (2) (a) 11., and (3m), 77.523, and 77.54 (23m) and (23n), Stats.

**Tax 11.66** – ss. 77.51 (1ba), (1r), (3c), (3pe), (3pn), (3rn), (5d), (5f), (5n), (5r), (7k), (8m), (9s), (10d), (10f), (11c), (13rn), (17m), (21n), (24), (25), and (26), 77.52 (2) (a) 5. and 5m., 77.522 (4), 77.525, and 77.54 (37), Stats.

**Tax 11.67** – ss. 77.51 (1f), (12), (12m), (13), (14) (intro.) and (h), (15a), (15b), (20), and (22) (a) and (b) and 77.52 (1), (2) (a), (2m) (a) and (b), (20), and (21), Stats.

**Tax 11.68** – ss. 77.51 (2), (12m) (b) 7., (12t), (14) (intro.), (15a) (b) 1. and 4., (15b) (b) 7., 77.52 (2) (a) 10., 11., and 20. and (2m), 77.53 (1), 77.54 (5) (d), (6) (am) 1., 4., and 5., (9m), (26), (26m), (31), (41), (60), and (65), 77.71 (3), and 77.77 (3), Stats.

**Tax 11.84** – ss. 77.52 (2) (a) 9. and 10., 77.53 (16), (17r), and (18), 77.54 (5) (a) and (7) and 77.61, Stats.

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

**Statutory authority:** ss. 71.80 (1) (c), 77.65 (3), 78.79, 125.03 (1), and 227.11 (2), Stats.

**Explanation of agency authority:** Section 71.80 (1) (c), Stats., provides that 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 77.65 (3), Stats., provides that the department may promulgate rules to administer compliance with the streamlined sales and use tax agreement.

Section 78.79, Stats., provides that the department may promulgate reasonable rules relating to the administration and enforcement of chapter 78 of the Wisconsin Statutes, relating to vehicle and general aviation fuel taxes. This provision applies to the revisions of ss. Tax 4.001, 4.53, and 4.54.

Section 125.03 (1), Stats., provides that the department may promulgate rules consistent with chapters 125 and 139 of the Wisconsin Statutes, relating to alcohol beverages regulation and beverage, controlled substances, and tobacco taxes, and to provide for registration of wine collectors and establishing standards of eligibility for registration as a wine collector. This provision applies to the revisions of ss. Tax 7.001, 8.001, 8.03, 9.001, and 9.70.

Section 227.11 (2), Stats., provides statutory rule-making authority as follows:

- (a) "Each 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..."

- (b) "Each agency authorized to exercise discretion in deciding individual cases may formalize the general policies evolving from its decisions by promulgating the policies as rules ..."

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

**Plain language analysis:** As required under sec. 227.29, Wis. Stats., the department performed a complete review of the Wisconsin's Administrative Code as it relates to income, franchise, withholding, excise, sales, and use taxes to determine if the rules are unauthorized, obsolete, unnecessary, duplicative, superseded, in conflict, economically burdensome, or outdated. The report submitted to the legislature's Joint Committee for Review of Administrative Rules on March 31, 2021, identified the following sections as needing updates:

**a. Chapter Tax 1 - General Administration**

- Section Tax 1.06 and 1.13: Eliminate references to alternative minimum tax, as it no longer applies as a result of 2017 Wisconsin Act 59.

**b. Chapter Tax 2 - Income Taxation, Returns, Records and Gross Income**

- Section Tax 2.02: Add reference to the department's new online tool for creating estimated payment vouchers.
- Section Tax 2.085: Update rule to be consistent with the department's update to Form 804, *Claim for Decedent's Wisconsin Income Tax Refund*. The form may now be submitted with the income tax return when filed instead of waiting to receive the refund check in the mail.
- Section Tax 2.67: Eliminate references to Forms A-1 and A-2, which calculate the percentage of income attributable to Wisconsin for multi-state businesses. These forms have been replaced with Schedules A-01 through A-11.
- Tax 2.92: Update rule to reflect federal changes to withholding; withholding allowances no longer apply for federal purposes.
- Tax 2.99: Repeal this section of the rule since this rule is only useful to those who are eligible to claim new credits, and no new dairy and livestock farm investment credit claims may be made for taxable years beginning after December 31, 2013, pursuant to secs. 71.07 (3n) (g), 71.28 (3n) (g), and 71.47 (3n) (g), Wis. Stats..

**c. Chapter Tax 4 - Motor Vehicle and General Aviation Fuel Taxation**

- Section Tax 4.001: Update email address for excise tax.
- Section Tax 4.53: Update rule to reflect that the department no longer provides paper Form MF-207, *Certificate of Authorization for Bulk Alternate Fuel Purchasers*, to customers.
- Section Tax 4.54: Update rule to provide an increased dollar threshold for when the department must describe the reasons for requiring security before obtaining a fuel tax license, and update rule to eliminate certificates of deposit as a form of security since the department no longer accepts such form of security.

**d. Chapter Tax 7 - Fermented Malt Beverages**

- Section Tax 7.001: Update email address for excise tax.

**e. Chapter Tax 8 - Intoxicating Liquors**

- Section Tax 8.001: Update email address for excise tax.
- Section Tax 8.03: Update mailing address for new mail stop.

**f. Chapter Tax 9 – Cigarette Tax**

- Section Tax 9.001: Update mailing address for new mail stop.
- Section Tax 9.70: Add references to vapor products, including the definition, as provided in 2019 Wisconsin Act 9.

**g. Chapter Tax 11 – Sales and Use Tax**

- Section Tax 11.001: Remove reference to stadium taxes as baseball stadium taxes ended March 31, 2020, as provided in 2019 Wisconsin Act 28.
- Section Tax 11.32: Remove reference to Form S-218 as this form is discontinued because it was duplicative of Form S-213.
- Section Tax 11.63: Update rule to reflect that radio or television stations may be required to collect Wisconsin sales tax if they are a marketplace provider, as provided in 2019 Wisconsin Act 10.
- Section Tax 11.66: Remove reference to internet access services as such services are no longer taxable after June 30, 2020, as a result of 2017 Wisconsin Act 59.
- Section Tax 11.67: Remove note relating to ruling requests for whether a specific transaction is a sale of a prototype or a research and development service with the prototype transferred incidental to the research and development service as they are no longer received. Any taxpayer can submit a request for ruling as described in the department's Publication 111, *How to Get a Private Letter Ruling*.
- Section Tax 11.68: Remove references to stadium tax as baseball stadium taxes ended March 31, 2020, as provided in 2019 Wisconsin Act 28, and repeal s. Tax 11.68 (4) (fm) as the exemption for sports and entertainment arena facilities no longer applies after July 31, 2019, which is one year after the Secretary of Administration issued certification.
- Section Tax 11.84: Remove references to stadium tax as baseball stadium taxes ended March 31, 2020, as provided in 2019 Wisconsin Act 28.

**h. Chapter Tax 14 – Homestead Credit**

- Section Tax 14.03: Update rule to reflect repeal of sec. 46.27, Stats., in 2019 Wisconsin Act 9. Rule will be updated to reference sec. 46.27, 2017 Stats.

**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:** Rules in adjacent states would not impact the changes in this proposed rule order.

**Summary of factual data and analytical methodologies:** No data analysis was used in the preparation of this proposed rule order.

**Analysis and supporting documents used to determine effect on small business:**

Applicants for fuel tax licenses (sec. Tax 4.54):

- *Increase the dollar threshold for when the department must describe the reasons for requiring security before obtaining a fuel tax license.* The current rule provides that the department must describe the reasons for requiring security if the security is over \$100. Current rule also provides that the security amount is equal to the average quarterly fuel tax liability, increased to the next \$100. Most fuel tax license applicants have over \$1,000

quarterly tax liability. It is anticipated that raising the threshold to \$1,000 will not alleviate the department from describing the reasons for requiring security for most applicants.

- *Eliminate certificates of deposit as a form of security.* Certificates of Deposit (CD's) are not an acceptable form of security because an investor may redeem a CD by presenting the account number and their driver's license to the financial institution. The department could be left holding an original CD that has no value. In addition, the department has not accepted such form of security for license applicants since September 30, 2019.

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

**Effect on small business:** This rule order primarily makes changes to reflect current law and administration. However, the changes to sec. Tax 4.54 may affect applicants for a fuel tax license. See the description in the analysis above.

**Agency contact person:** Please contact Jen Olson at (608) 266-8253 or [jennifer.olson@wisconsin.gov](mailto:jennifer.olson@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.

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**SECTION 1.** Tax 1.06 is amended to read:

Tax 1.06 **Application of federal income tax regulations.** To the extent that any provision of the internal revenue code has application in the determination of Wisconsin taxable income, Wisconsin net income, or Wisconsin income or franchise tax ~~or Wisconsin minimum tax or alternative minimum tax~~ of any natural person, fiduciary or corporation, including tax-option (S) corporations, any United States treasury regulation interpreting the provision shall be deemed a tax rule of the Wisconsin Administrative Code.

**SECTION 2.** Tax 1.13 (1) (b) is amended to read:

Tax 1.13 (1) (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 3.** Tax 2.02 (11) (a) (Note) is created to read:

Tax 2.02 (11) (a) **Note:** Form 1-ES may be obtained by using the department's estimated income tax interactive voucher at [www.revenue.wi.gov/Pages/OnlineServices/voucher-1es.aspx](http://www.revenue.wi.gov/Pages/OnlineServices/voucher-1es.aspx).

**SECTION 4.** Tax 2.085 (1) is repealed and recreated to read:

Tax 2.085 (1) If a claimant is filing a deceased taxpayer's income tax return and is due a refund, the claimant shall file Form 804, "Claim for Decedent's Wisconsin Income Tax Refund," with the income tax return. If the claimant did not file Form 804 with the income tax return, a refund check is issued in the deceased taxpayer's name. If the claimant is unable to cash the refund check, the claimant shall file Form 804.

**SECTION 5.** Tax 2.085 (3) is amended to read:

Tax 2.085 (3) Forms required to be filed under sub. (1) shall be mailed to Wisconsin Department of Revenue, ~~Tax Operations Bureau—Mail Stop 3-164~~, P.O. Box 8903, Madison, WI 53708-8903.

**SECTION 6.** Tax 2.67 (2) (c) 4. is amended to read:

Tax 2.67 (2) (c) 4. If the combined group is using apportionment, ~~one Form A-1, Apportionment Data for Single Factor Formulas, or Form A-2, Apportionment Data for Multiple Factor Formulas~~ one of the following forms, per member as applicable:;

a. Schedule A-01, Wisconsin Single Sales Factor Apportionment Data for Nonspecialized Industries.

b. Schedule A-02, Wisconsin Apportionment Percentage for Interstate Financial Institutions.

c. Schedule A-03, Wisconsin Apportionment Percentage for Interstate Motor Carriers.

d. Schedule A-04, Wisconsin Apportionment Percentage for Interstate Telecommunications Companies.

e. Schedule A-05, Wisconsin Premium Factor for Insurance Companies.

f. Schedule A-06, Wisconsin Receipts Factor for Interstate Brokers-Dealers, Investment Advisors, Investment Companies, and Underwriters.

g. Schedule A-07, Wisconsin Apportionment Percentage for Interstate Air Carriers.

h. Schedule A-08, Wisconsin Apportionment Percentage for Broadcasters.

i. Schedule A-09, Wisconsin Apportionment Percentage for Interstate Railroads.

j. Schedule A-10, Wisconsin Apportionment Percentage for Interstate Pipeline Companies.

k. Schedule A-11, Wisconsin Apportionment Percentage for Interstate Air Freight Forwarders Affiliated with a Direct Air Carrier.

**SECTION 7.** Tax 2.92 (1) is repealed and recreated to read:

Tax 2.92 (1) An employee is required to provide a completed Form WT-4, "Employee's Withholding Exemption Certificate/New Hire Reporting," to their employer.

**SECTION 8.** Tax 2.92 (2) is amended to read:

Tax 2.92 (2) An employee who had incurred no Wisconsin income tax liability for the preceding taxable year and anticipates no liability for a current taxable year shall be exempt from withholding if the employee provides his or her employer with a completed ~~form~~ Form WT-4, "Employee's ~~Wisconsin Withholding Exemption Certificate~~ Certificate/New Hire Reporting" which shows a claim for total exemption. For this purpose, a tax liability is "incurred" if the employee had for the preceding year, or anticipates for the current year, a net Wisconsin income tax due, i.e., gross tax less personal exemptions on a Wisconsin return. If an employee is married, the Wisconsin marital

property laws for tax computation shall be considered in determining if the employee may claim this exemption.

**SECTION 9.** Tax 2.99 is repealed.

**SECTION 10.** Tax 4.001 (2) (c) 1. (Note) is amended to read:

Tax 4.001 (2) (c) 1. **Note:** Written requests should be e-mailed to ~~excise@wisconsin.gov~~ DORExciseTaxpayerAssistance@wisconsin.gov, faxed to (608) 261-7049, or addressed to Mandate Waiver Request, Wisconsin Department of Revenue, Mail Stop 5-107, PO Box 8900, Madison WI 53708-8900.

**SECTION 11.** Tax 4.53 (3) (Note 1) is repealed.

**SECTION 12.** Tax 4.54 (2) (c) is amended to read:

Tax 4.54 (2) (c) In instances in which the department determines security in excess of ~~\$100~~ \$1,000 is required, notification of this requirement shall include a written statement clearly describing the reasons for the requirement and a description or calculation showing how the amount of the security requirement was determined.

**SECTION 13.** Tax 4.54 (3) (intro.) and (a) are consolidated, renumbered Tax 4.54 (3) and amended to read:

Tax 4.54 (3) TYPES OF SECURITY. Acceptable types of security include, ~~but are not limited to:~~ (a) Noninterest-bearing: ~~1. Cash~~ cash, certified check, or money order. ~~2. or Surety~~ surety bonds issued by authorized underwriters.

**SECTION 14.** Tax 4.54 (3) (b) is repealed.

**SECTION 15.** Tax 7.001 (2) (c) 1. (Note) is amended to read:

Tax 7.001 (2) (c) 1. **Note:** Written requests should be e-mailed to ~~excise@wisconsin.gov~~ DORExciseTaxpayerAssistance@wisconsin.gov, faxed to (608) 261-7049, or addressed to Mandate Waiver Request, Wisconsin Department of Revenue, Mail Stop 5-107, PO Box 8900, Madison WI 53708-8900.

**SECTION 16.** Tax 8.001 (2) (c) 1. (Note) is amended to read:

Tax 8.001 (2) (c) 1. **Note:** Written requests should be e-mailed to ~~excise@wisconsin.gov~~ DORExciseTaxpayerAssistance@wisconsin.gov, faxed to (608) 261-7049, or addressed to Wisconsin Department of Revenue, Excise Tax Section — Mail Stop 6-107, PO Box 8900, Madison WI 53708-8900.

**SECTION 17.** Tax 8.03 (2) (Note) is amended to read:

Tax 8.03 (2) **Note:** Wine collector registrations may be addressed to Wisconsin Department of Revenue, Excise Tax ~~Section~~ Unit — Mail Stop ~~6-107~~ 5-107, PO Box 8900, Madison, Wisconsin 53708-8900.

**SECTION 18.** Tax 9.001 (2) (c) 1. (Note) is amended to read:

Tax 9.001 (2) (c) 1. **Note:** Written requests should be e-mailed to ~~excise@wisconsin.gov~~ DORExciseTaxpayerAssistance@wisconsin.gov, faxed to (608) 261-7049, or addressed to Wisconsin Department of Revenue, Excise Tax ~~Section~~ Unit— Mail Stop ~~6-107~~ 5-107, PO Box 8900, Madison WI 53708-8900.

**SECTION 19.** Tax 9.70 (Title) and (1) are amended to read:

Tax 9.70 **Cigarette, and tobacco, and vapor products tax bad debt deductions.** (1) **PURPOSE.** This section clarifies when and how a person who pays cigarette taxes or a distributor who pays tobacco and vapor taxes may claim a deduction under ss. 139.362 and 139.801, Stats., for cigarette, and tobacco, and vapor products tax attributable to bad debt.

**SECTION 20.** Tax 9.70 (2) (e) is created to read:

Tax 9.70 (2) (e) "Vapor product" has the meaning given in s. 139.75 (14), Stats.

**SECTION 21.** Tax 9.70 (3) (a), (c), (d), (e), and (f) are amended to read:

Tax 9.70 (3) (a) *Deduction from measure of tax.* Using ~~form~~ Form CT-117, titled "Cigarette Distributor Bad Debt Deduction for Uncollectible Wisconsin Cigarette Tax," or ~~form~~ Form TT-117, titled "Tobacco and Vapor Products Distributor Bad Debt Deduction for Uncollectible Wisconsin Tobacco Products Tax," a person who pays cigarette taxes or a distributor who pays tobacco and vapor products taxes may claim a deduction on the monthly tax report for the cigarette, and tobacco, and vapor products tax attributable to bad debt that is written off as uncollectible in their books and records and that is eligible to be deducted as bad debt under s. 166 of the ~~internal revenue code~~ Internal Revenue Code.

(c) *Recovery of bad debt.* If a person who pays cigarette taxes or a distributor who pays tobacco and vapor products taxes subsequently collects in whole or in part any bad debt for which a deduction is claimed under par. (a), they shall include the amount collected in the monthly tax report filed for the month in which the amount is collected and shall pay the tax with the report.

(d) *Payments and credits.* Payments and credits applied to a debt before it is written off as uncollectible shall be apportioned to the amount of such debt attributable to cigarette or tobacco and vapor products tax on the basis of the ratio of the cigarette or tobacco and vapor products tax to be paid per the invoice to the total amount to be paid per the invoice. The amount so apportioned shall reduce the amount of debt attributable to cigarette or tobacco and vapor products tax to arrive at the deduction under par. (a).

(e) *Tax rate change.* If the deduction under par. (a) is claimed for a month when the cigarette or tobacco products or vapor products tax rate is different from the tax rate in effect when the cigarettes, or tobacco or vapor products were sold, the tax rate in effect when the cigarettes, or tobacco or vapor products were sold shall be used to determine the amount of the deduction.

(f) *Illegal sales.* No deduction under par. (a) shall be allowed for cigarette, and tobacco, and vapor products tax attributable to bad debt incurred on sales of cigarettes, or tobacco, or vapor products sold in violation of state or federal law.

**SECTION 22.** Tax 11.001 (1) is amended to read:

Tax 11.001 (1) **APPLICABILITY.** Chapter Tax 11 is applicable to the state sales and use taxes imposed under subch. III of ch. 77, Stats., and is also applicable to the county ~~and stadium~~ sales and use ~~taxes~~ taxes authorized under subch. V of ch. 77, Stats.

**SECTION 23.** Tax 11.001 (2) (d) is repealed.

**SECTION 24.** Tax 11.001 (2) (e) is amended to read:



Tax 11.001 (2) (e) "Tax" means the Wisconsin sales or use taxes in effect under ss. 77.52 (1) and (2) and 77.53 (1), Stats. "Tax" also includes the county and stadium taxes tax imposed under s. 77.71, Stats.

**SECTION 25.** Tax 11.32 (4) (a) 2. is amended to read:

Tax 11.32 (4) (a) 2. Conspicuously posting the bracket system card, ~~form~~ Form S-213 or S-218, issued by the department.

**SECTION 26.** Tax 11.63 (2) (c) is amended to read:

Tax 11.63 (2) (c) ~~If~~ When a radio or television station advertises on behalf of ~~out-of-state~~ persons to sell merchandise, ~~such as records or books, or taxable services,~~ the station is a marketplace provider ~~the retailer of the merchandise~~ and shall pay collect and remit sales tax on the sales if: the station directly or indirectly, through agreements or arrangements with third parties, processes the payment from the purchaser for the retail sale, regardless of whether the station receives compensation or other consideration in exchange for the services provided by the station.

**SECTION 27.** Tax 11.63 (2) (c) 1. and 2. are repealed:

**SECTION 28.** Tax 11.66 (3) (intro.) is amended to read:

Tax 11.66 (3) SOURCING. This subsection describes the sourcing of telecommunications services, ancillary services, ~~Internet access services,~~ and telecommunications message services.

**SECTION 29.** Tax 11.66 (3) (c) is repealed.

**SECTION 30.** Tax 11.66 (3) (d) is amended to read:

Tax 11.66 (3) (d) *Exceptions.* For purposes of pars. (a), and (b), ~~and (c),~~ if the location of the customer's service address, channel termination point, or place of primary use is not known, the location where the seller receives or hands off the signal shall be considered, for purposes of this rule, the customer's service address, channel termination point, or place of primary use.

**SECTION 31.** Tax 11.67 (3) (e) 2. (Note) is repealed.

**SECTION 32.** Tax 11.68 (4) (fm) is repealed.

**SECTION 33.** Tax 11.68 (13) (Title), (a), (c), (d), and (e) are amended to read:

Tax 11.68 (13) ~~COUNTY AND STADIUM TAXES~~ TAX ON BUILDING MATERIALS. (a) Section 77.71 (3), Stats., imposes excise taxes upon a contractor engaged in construction activities, which includes constructing, altering, repairing, or improving real property within any county ~~or special district's jurisdictional area~~ that has adopted the county ~~or stadium~~ sales and use tax. The taxes are measured by the purchase price of the tangible personal property and items, property, and goods under s. 77.52 (1) (b), (c), and (d), Stats., used in constructing, altering, repairing, or improving real property which becomes a component part of real property in that county ~~or special district's jurisdictional area~~, unless the contractor has paid the county ~~or stadium~~ tax of a county ~~or special district~~ in Wisconsin or a similar local sales tax in another state on the purchase of that property, item, or good.

(c) In providing the services to property subject to taxation under s. 77.52 (2) (a) 10., Stats., a contractor may purchase without county ~~or stadium~~ tax for resale tangible personal property and

items and goods under s. 77.52 (1) (b) and (d), Stats., physically or electronically transferred to the customer in conjunction with providing such services.

(d) Section 77.77 (3), Stats., provides that the sales tax under s. 77.71 (1), Stats., and the ~~county and stadium taxes tax~~ under s. 77.71 (3), Stats., on the sale of building materials to contractors engaged in the business of constructing, altering, repairing, or improving real estate for others are not imposed, if the materials are affixed and made a structural part of real estate and the amount payable to the contractor is fixed without regard to the costs incurred in performing a written contract that was irrevocably entered into prior to the effective date of the county ordinance or special district resolution, or that resulted from the acceptance of a formal written bid accompanied by a bond or other performance guaranty that was irrevocably submitted before that date.

(e) The ~~county and stadium taxes tax~~ under s. 77.71 (3), Stats., on building materials used in real property construction activities are not imposed if the contractor purchased the building materials before the effective date of the county ~~or stadium~~ tax of that county ~~or special district's jurisdictional area~~ or has paid the sales tax of another county ~~or special district~~ in Wisconsin in purchasing the building materials.

**SECTION 34.** Tax 11.84 (1) (c) is amended to read:

Tax 11.84 (1) (c) Section 77.61 (1) (a), Stats., provides that no aircraft may be registered in Wisconsin unless the registrant presents proof that the sales tax has been paid or a valid exemption was claimed. If the registrant does not present proof that the tax has been paid, the registrant shall pay the tax to the department of transportation at the time the aircraft is registered or titled in Wisconsin. The tax applies to aircraft registered or customarily hangared or both in Wisconsin, even though the aircraft also may be used out-of-state. If the purchase of an aircraft subject to Wisconsin use taxes was subject to a sales or use tax in the state in which the purchase was made or in a state where the aircraft was stored, used, or consumed prior to being stored, used, or consumed in Wisconsin, the amount of the sales or use taxes paid to the other state or states shall be applied as a credit against and deducted from, to the extent thereof, the Wisconsin state, and county, ~~and stadium district~~ use taxes imposed on the storage, use, or consumption of the aircraft in Wisconsin.

**SECTION 35.** Tax 14.03 (4) (b) 3. e. is amended to read:

Tax 14.03 (4) (b) 3. e. Reimbursement from a governmental agency for amounts originally paid for by the recipient, not including cash reimbursements for home energy assistance or for services under Title XX of the federal social security act and community options program, or "COP" payments under s. 46.27, 2017 Stats.

**SECTION 36.** 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.

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

By: \_\_\_\_\_

Peter W. Barca  
Secretary of Revenue

E:Rules/180 – Biennial Review 2021 – SS 057-21/Tax 1,2,4,7,8,9,11,14 Update Proposed Order