

Clearinghouse Rule 23-028

PROPOSED ORDER OF THE DEPARTMENT OF REVENUE REPEALING RULES

The Wisconsin Department of Revenue proposes an order to: **create** Tax 10.01 **relating to** unclaimed property.

The scope statement for this rule, SS 033-22, was approved by the Governor on April 14, 2022, published in Register No. 796A3 on April 18, 2022, and approved by the Secretary of Revenue on May 11, 2022.

Analysis by the Department of Revenue

Statutes interpreted:

ss. 177.0307 and 177.0604, Stats.

Statutory authority: ss. 177.016 and 227.11 (2), Stats.

Explanation of agency authority: Section 177.016 provides specific statutory rule-making authority for unclaimed property as follows:

"Rules. The administrator may adopt any rules necessary to administer this chapter."

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..."
- (c) "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: The objective of the rule is to establish a period of time to convert virtual currency to U.S. currency prior to reporting and delivering it to the department as unclaimed property.

Current law requires certain abandoned virtual currency to be converted to U.S. currency and delivered to the department (sec. 177.0307, Wis. Stats.). Current law also provides relief from liability to holders that deliver or pay the property to the department in good faith but does not specify when or how soon a holder must convert the property prior to delivery so that the holder can be relieved from liability relating to the property (sec. 177.0604, Wis. Stats.).

Currently, the department has published guidance that provides a holder is considered to have delivered property in good faith and is relieved of liability if the holder converts the virtual currency to U.S. currency within 30 days prior to reporting and delivering it to the department.

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 has the following provision in their unclaimed property law:

If property reported to the administrator is virtual currency, the holder shall liquidate the virtual currency and remit the proceeds to the administrator. The liquidation shall occur anytime within 30 days prior to the filing of the report under Section 15-401. The owner shall not have recourse against the holder or the administrator to recover any gain in value that occurs after the liquidation of the virtual currency under this subsection (756 ILCS 1026/15-603(i)).

Summary of factual data and analytical methodologies: 2021 Wis. Act 87 provided virtual currency that is presumed abandoned is subject to the unclaimed property laws and the holder is required to convert to U.S. currency prior to delivery to the administrator. However, it did not provide a time frame for converting. The department looked for timeframes used among other states. Delaware and Kentucky require liquidation 90 days prior to reporting deadlines and Illinois requires liquidation 30 days prior to the reporting deadline. With high levels of volatility, a shorter amount of time to convert the property minimizes the potential difference in valuation that can occur between conversion and delivery to the department.

Analysis and supporting documents used to determine effect on small business: This rule order makes changes that are consistent with current published guidance. It makes no policy or other changes having an effect on small business. The department recognizes there may be an economic advantage or disadvantage to the owner of the virtual currency if the value of the virtual currency increases or decreases after liquidation.

Anticipated costs incurred by private sector: There may be costs incurred to convert virtual currency to U.S. currency; however, this cost is required to be incurred as a result of the law. There are no anticipated costs as a result of this proposed rule.

Effect on small business: It is unknown how much time is needed for small businesses to convert virtual currency to U.S. currency for purposes of reporting and delivering to the department.

Agency contact person: Please contact Ann DeGarmo at (608) 266-7179 or ann.degarmo@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. Chapter Tax 10 is created to read:

Chapter Tax 10

UNCLAIMED PROPERTY

SECTION 2. Tax 10.01 title is created to read:

Tax 10.01 VIRTUAL CURRENCY.

SECTION 3. Tax 10.01 (1) and (2) are created to read:

(1) A holder that is required to report and remit virtual currency to the department as provided under s. 177.0307, stats., shall liquidate the virtual currency within 30 days prior to the November 1 due date of the report.

(2) A holder that meets the requirement in sub. (1), and substantially complies with ss. 177.0501 and 177.0502, stats., is considered to have delivered the virtual currency in good faith and is relieved of liability arising after payment and delivery of the virtual currency to the administrator.

SECTION 4. 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