

Chapter Tax 1

GENERAL ADMINISTRATION

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Tax 1.001 Definition. In chs. Tax 1 to 12, 14, 16 to 18, unless otherwise specified:

(1) “Department” means the Wisconsin department of revenue.

History: Cr. Register, February, 1978, No. 266, eff. 3-1-78; am. (intro.), Register, September, 1983, No. 333, eff. 10-1-83; am. (intro.), Register, July, 1989, No. 403, eff. 8-1-89.

Tax 1.01 Assessment districts. The secretary of revenue has divided the state into the following income tax assessment districts:

(1) APPLETON DISTRICT. (a) *Headquarters.* Appleton.

(b) *Counties served.*

1. Brown
2. Calumet
3. Door
4. Florence
5. Fond du Lac
6. Forest
7. Green Lake
8. Kewaunee
9. Langlade
10. Manitowoc
11. Marinette
12. Marquette
13. Menominee
14. Oconto
15. Outagamie
16. Shawano
17. Sheboygan
18. Waupaca
19. Waushara
20. Winnebago

(2) EAU CLAIRE DISTRICT. (a) *Headquarters.* Eau Claire.

(b) *Counties served.*

1. Adams
2. Ashland
3. Barron
4. Bayfield
5. Buffalo
6. Burnett
7. Chippewa
8. Clark
9. Douglas
10. Dunn
11. Eau Claire
12. Iron
13. Jackson
14. Juneau

15. LaCrosse

16. Lincoln

17. Marathon

18. Monroe

19. Oneida

20. Pepin

21. Pierce

22. Polk

23. Portage

24. Price

25. Rusk

26. St. Croix

27. Sawyer

28. Taylor

29. Trempealeau

30. Vilas

31. Washburn

32. Wood

(3) MADISON DISTRICT. (a) *Headquarters.* Madison.

(b) *Counties served.*

1. Columbia
2. Crawford
3. Dane
4. Dodge
5. Grant
6. Green
7. Iowa
8. Jefferson
9. LaFayette
10. Richland
11. Rock
12. Sauk
13. Vernon

(4) MILWAUKEE DISTRICT. (a) *Headquarters.* Milwaukee.

(b) *Counties served.*

1. Kenosha
2. Milwaukee
3. Ozaukee
4. Racine
5. Walworth
6. Washington
7. Waukesha

Note: Section Tax 1.01 interprets s. 73.05, Stats.

History: 1-2-56; am. Register, September, 1964, No. 105, eff. 10-1-64; am. Register, February, 1975, No. 230, eff. 3-1-75; am. Register, September, 1983, No. 333, eff. 10-1-83.

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, 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.

Note: 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.

History: Cr. Register, March, 1966, No. 123, eff. 4-1-66; am. Register, July, 1987, No. 379, eff. 8-1-87; am Register, June, 1990, No. 414, eff. 7-1-90.

Tax 1.10 Depository bank requirements for estimated tax vouchers, sales and use tax returns, and withholding, motor fuel, general aviation fuel and special fuel tax deposit reports. (1) DAILY PROCESSING OF DOCUMENTS. Screening and processing of deposit reports, returns, and vouchers shall be done daily on the date received in accordance with specific procedures provided by the department.

(2) DOCUMENTS RECEIVED WITH PROPER PAYMENT. The depository bank shall inscribe the date received, amount of payment and a consecutively assigned validation number upon each deposit report, return, or voucher. That same information shall be inscribed on the payment. The deposits received and validated for each day shall be combined into a single deposit to the account of the state treasurer. The processed documents shall be kept in sequence within batches for each business day. The batches for each business day shall be sent daily by special courier to the department's revenue accounting section in Madison. A validation tape and batch card shall accompany each batch, and each day's transmittal shall include a separate recapitulation sheet for each tax program. A copy of the combined daily deposit slip shall also be included in each day's transmittal.

(3) EXCEPTIONS. Non-processible documents or remittances, or both, as described in writing to the depository bank by the department's revenue accounting section, shall be exceptions to the treatment provided in sub. (1) and shall not be validated. Instead, they shall be sent to the department's revenue accounting section with the envelopes in which they were received.

Note: Section Tax 1.10 interprets s. 71.65 (3) (a), Stats.

History: Cr. Register, March, 1975, No. 231, eff. 4-1-75; am. (1) (a) and (b) 4, and (2), Register, September, 1983, No. 333, eff. 10-1-83; renum. (1) and (2) to be (2) and (3) and am. (2) (a), cr. (1), Register, July, 1987, No. 379, eff. 8-1-87; am. (1), (2) (a) and (3), r. (2) (b), Register, June, 1990, No. 414, eff. 7-1-90.

Tax 1.11 Requirements for examination of returns.

(1) PUBLIC OFFICER DEFINED. In this section, "public officer" means any person appointed or elected according to law, who has continuous duties, has taken an oath of office and who is responsible for the exercise of some portion of the sovereign power of this state, another state or the United States, in which the public has a concern. One, but not the sole, indicium of responsibility for exercising the sovereign power is the authority to make final policy with regard to those duties of a public officer requiring access to tax files under this section.

(2) GENERAL. The provisions of ss. 70.375 (2) (b), 71.78, 72.06, 77.61 (5), 77.76 (3), 77.79, 78.80 (3) and (4), 139.11 (4), 139.38 (6) and 139.82 (6), Stats., apply to the examination of mining net proceeds, income, franchise, gift, fiduciary, partnership, inheritance, estate, sales and use, county sales and use, withholding, motor fuel, general aviation fuel, special fuel, fermented malt beverage, distilled spirits and wine, cigarette and tobacco product tax returns and tax credit claims. No person may examine or receive information from a tax return or tax credit claim unless specifically authorized to do so by the appropriate statute.

(3) PERSONS WHO MAY EXAMINE RETURNS. (a) *Public officers of the federal government or other state governments.* No information may be divulged to a public officer of the federal government or another state government or the authorized agents of the officer under the provisions specified in sub. (2) unless the infor-

mation requested is necessary in the administration of the tax laws of the government; the government accords similar rights of examination or information to the Wisconsin department of revenue; the government has entered into an agreement with the department for the disclosure or exchange of information; and the public officer first complies with all of the following:

1. Specifies in writing the purpose for each requested examination, the statutory or other authority showing the duties of the office and the relation of the purpose to the duties of the office.

2. Specifies in writing the name, address and title of the agent authorized to examine tax returns.

3. Provides evidence that he or she is a public officer.

(b) *Members of the joint, senate or assembly committee on legislative organization.* 1. No information may be divulged to members of the joint committee on legislative organization, senate committee on organization or assembly committee on organization, or to any agent of these committees under the provisions specified in sub. (2) unless all of the following requirements are first complied with:

a. Specification in writing of the purpose for each requested examination and the relation of the purpose to the official duties of the committee requesting the examination of tax returns.

b. Specification in writing of the name, address and title of the committee member or agent authorized to examine tax returns.

c. Certification by the chairperson of the committee that the committee, by a majority vote of a quorum of its members, has approved the requested examination of tax returns by the committee member or agent.

2. Sales and use tax returns may not be examined by the joint committee on legislative organization.

(c) *Attorney general or department of justice employees.* No information may be divulged to the attorney general or department of justice employees under the provisions specified in sub. (2) unless all of the following requirements are first complied with:

1. The attorney general shall specify in writing the purpose for each requested examination, the statutory authority or other authority showing the duties of the office and the relation of the purpose to the duties of the office.

2. Each requested examination by a department of justice employee shall include the data in par. (c) 1. and an authorization identifying the employee by name, address and title. The authorization shall be signed and approved by the attorney general on whose behalf the department of justice employee is acting.

(d) *District attorneys.* No information may be divulged to district attorneys under the provisions specified in sub. (2) unless the following requirements are first complied with:

1. The tax information to be examined by the district attorney is for use in preparation for a judicial proceeding or an investigation which may result in a judicial proceeding involving any of the taxes or tax credits referred to in sub. (2) and one of the following applies:

a. The taxpayer is or may be a party to the proceeding.

b. The treatment of an item reflected in the tax information is or may be related to the resolution of an issue in the proceeding or investigation.

c. The tax information relates or may relate to a transactional relationship between the taxpayer and a person who is or may be a party to the proceeding which affects or may affect the resolution of an issue in the proceeding or investigation.

2. The district attorney specifies in writing the purpose for each requested examination, the statutory or other authority showing the duties of the office and the relation of the purpose to the duties of the office.

(e) *Employees of this state.* No information may be divulged to employees of this state under the provisions specified in sub. (2) unless all of the following requirements are first complied with:

1. The public officer of the department, division, bureau, board or commission of this state specifies in writing the purpose for each requested examination, the statutory or other authority showing the duties of the office and the relation of the purpose to the duties of the office, and the name, address and title of the employee of this state authorized to examine returns.

2. The department of revenue deems the examination necessary for the employee to perform his or her duties under contracts or agreements between the department of revenue and the department, division, bureau, board or commission of this state relating to the administration of tax laws or child support enforcement under s. 49.22, Stats.

(f) *Taxpayers and spouses or former spouses of taxpayers.* 1. No information may be divulged to a taxpayer under the provisions specified in sub. (2) unless the taxpayer, an officer of the taxpayer corporation or the authorized representative of the taxpayer provides appropriate identification.

2. No income tax information may be divulged to a taxpayer's spouse or former spouse under the provisions specified in sub. (2) except in the following cases:

a. In the case of a joint income tax return, the spouse or former spouse signed the joint return.

b. In the case of a separate income tax return, for the 1986 tax year and thereafter, the spouse or former spouse shows that the spouse or former spouse may be liable, or the spouse's or former spouse's property is subject to collection, for a delinquency relating to the tax return requested to be examined.

c. In the case of a combined income tax return, for the 1985 tax year and prior tax years, the spouse or former spouse signed the combined return.

(g) *Persons designated by court order.* No information may be divulged to a person designated by a court order under the provisions specified in sub. (2) unless all of the following requirements are first complied with:

1. The person serves a copy of the court order signed by a judge of a court of record on the custodian of files.

2. The order recites that the information contained in the tax return requested to be examined is relevant to the pending action for which the order is issued.

(4) **SPECIAL SITUATIONS.** (a) *Board of arbitration.* A member of the board of arbitration established under s. 71.10 (7), Stats., or a consultant under joint contract with the states of Minnesota and Wisconsin may examine income tax returns for purposes of determining the reciprocity loss to which either state is entitled.

(b) *Commissioner of insurance.* The office of the commissioner of insurance may request and receive a list of names and addresses of persons who indicate they are self-insurers on their annual withholding reports. The office of the commissioner of insurance may not examine tax returns of persons appearing on the list.

(c) *Legislative fiscal bureau.* Employees of the legislative fiscal bureau, to the extent the department deems the examination necessary to perform their duties under contracts or agreements between the department of revenue and the legislative fiscal bureau relating to the review and analysis of tax policy and state revenue collections, may examine tax returns under the provisions specified in sub. (2), except state and county sales and use tax returns.

(d) *Lottery division.* The administrator of the lottery may request examination of tax returns for the purpose of withholding delinquent Wisconsin taxes, child support, and other debts owing this state.

(e) *Wisconsin economic development corporation.* The chief executive officer of the Wisconsin economic development corporation and employees of the corporation may examine tax returns, except state and county sales and use tax returns, under the provisions

specified in sub. (2), to the extent necessary to administer the development zone program under subch. II of ch. 238, Stats.

(f) *Refund setoffs.* The department may supply the address of a debtor to an agency certifying a debt of the debtor under the refund setoff provisions of s. 71.93, Stats.

(g) *Successor, guarantor or surety.* Any person against whom the department asserts liability under ch. 77, Stats., may examine the related sales and use tax returns.

(h) *Agreements.* The department may, when satisfied that the restrictions imposed under sub. (2) will be adequately safeguarded and a beneficial tax purpose is demonstrated, enter into agreements with governmental officials whereby information is disclosed or exchanged. In these instances, the requirements of this section may be modified in the discretion of the department.

(5) **FORM OF REQUEST.** (a) With each requested examination under subs. (3) and (4), there shall also be submitted in writing or by other means as approved by the department all of the following:

1. The name and address of each taxpayer whose return is requested.

2. The type of tax return or tax credit claim, such as mining net proceeds, income, franchise, gift, homestead credit, or sales and use tax.

3. The taxable period.

4. The taxpayer's social security number, if available, in the case of returns relating to individuals.

5. In the case of a request by a public officer, a statement indicating that the authorized agent understands the provisions specified in sub. (2) and that any persons who use or permit the use of any information directly or indirectly so obtained beyond the duties imposed upon them by law or by the duties of their office shall be deemed in violation of the provisions specified in sub. (2).

(b) The information required to be submitted to the department under sub. (5) (a) shall be submitted on forms provided by the department and shall be open to inspection by the public for a period of 2 years from the date the information is filed with the department. If a public officer, the attorney general or a district attorney responsible for enforcement of the criminal laws, in the statement required under sub. (3), declares that a return is being examined for the purpose of a criminal investigation, the department shall accept that declaration as prima facie evidence of the fact that making the knowledge public would result in harm to the public interest which outweighs any benefit that would result from making it public, and the department shall not make the knowledge public for a period of 30 days from the date of filing the statement.

Note: Section Tax 1.11 interprets ss. 70.375 (2) (b), 71.78, 72.06, 77.61 (5), 77.76 (3), 77.79, 78.80 (3) and (4), 139.11 (4), 139.38 (6) and 139.82 (6), Stats.

History: Cr Register, August, 1975, No. 236, eff. 9-1-75; am. (4) and cr. (5), Register, January, 1976, No. 241, eff. 2-1-76; emerg. cr. (9), eff. 12-31-78; am. (1) (intro.) and (a) and (2), r. (1) (b), renum. (1) (c) to be (1) (b) and am., renum. (3) to (5) to be (6) to (8) and am. (7) and (8), cr. (3) to (5), Register, January, 1979, No. 277, eff. 2-1-79; cr. (9), Register, March, 1979, No. 279, eff. 4-1-79; am. (1) (intro.) and (b), (4) (a), r. (9), Register, July, 1981, No. 307, eff. 8-1-81; am. (1) (b), (2) (c), (3) (c), (4) (a) and (c) and (5) (b), Register, June, 1983, No. 330, eff. 7-1-83; am. (5) (intro.) and (d), Register, September, 1983, No. 333, eff. 10-1-83; r. and recr. Register, January, 1991, No. 421, eff. 2-1-91; correction in (3) (e) made under s. 13.93 (2m) (b) 7., Stats., Register, September, 1999, No. 525; CR 12-011: r. and recr. (4) (e) Register July 2012 No. 679, eff. 8-1-12; CR 13-012: am. (4) (d) Register August 2013 No. 692, eff. 9-1-13.

Tax 1.12 Electronic funds transfer. (1) SCOPE. This section applies to any person who is required to or elects to pay or deposit taxes, fees, or other amounts by electronic funds transfer, or "EFT."

(2) **PURPOSE.** The purpose of this section is to specify which taxes, fees, and other amounts are required to be paid or deposited using the EFT payment method, to provide that certain persons not required to use the EFT payment method may elect to do so and to explain the procedures for using EFT.

(3) **DEFINITIONS.** In this section:

(a) "ACH" means automated clearing house, a central clearing facility operated by a federal reserve bank or a private sector organization on behalf of depository financial institutions in which depository financial institutions transmit or receive ACH entries.

(b) "ACH credit" means the EFT payment option in which the payer initiates the transfer of funds by authorizing the payer's financial institution to transfer the payment amount to the department's depository bank.

(c) "ACH debit" means the EFT payment option in which the payer initiates the transfer of funds by authorizing the department's depository bank to transfer the payment amount from the payer's account.

(cg) "Combined group" has the meaning given in s. 71.255 (1) (a), Stats.

(cr) "Confirmation number" means a character code uniquely identifying the successful completion of an EFT transaction.

(d) "Electronic funds transfer" or "EFT" means any transfer of funds initiated through a terminal, telephone, or computer authorizing a financial institution to debit or credit an account on the requested settlement date.

Note: The EFT payment method allows funds to be transferred electronically from the payer's financial institution to the department's depository bank eliminating the need to prepare and process a paper check.

(e) "Entry" means an electronic item representing the transfer of funds in the ACH system.

(f) "Financial institution" means any bank, savings and loan, credit union, industrial bank or other institution organized under either national or state banking laws capable of both accepting deposits and making loans.

(fm) "Pass-through entity" has the meaning given in s. 71.775 (1) (b), Stats.

(g) "Payer" means any person who is required to or elects to pay or deposit taxes, fees, or other amounts by electronic funds transfer.

(h) "Settle" or "settlement" means to transfer funds, or a transfer of funds, between two parties in cash or negotiable items or on the books of a mutual depository to complete one or more prior transactions and made subject to a final accounting.

(i) "Settlement date" means the date on which an exchange of funds with respect to an entry or entries is reflected on the books of the department's depository bank.

(j) "Trace number" means a character code uniquely identifying each ACH entry.

(4) REQUIREMENT OR ELECTION TO USE EFT. (a) Except as provided in sub. (9), the department requires the taxes, fees, and other amounts described in subds. 1. to 18. be paid or deposited using the EFT payment method. The following taxes, fees, and other amounts are included in the EFT payment requirement:

1. Corporate income and franchise tax estimated tax payments and tax due with the tax return when the net tax less refundable credits on the prior year's tax return was \$1,000 or more. For a combined group or combined group member, "prior year's tax return" means the prior year's tax return of the designated agent.

2. Income tax withholding payments when the required deposits were \$300 or more in the prior calendar year.

3. General, county, and stadium sales and use tax when the aggregate amount due in the prior calendar year was \$300 or more.

Note: See s. Tax 11.001 (2) (d) for the definition of stadium tax.

4. Fermented malt beverages tax when the tax due after the adjustment for any overpayment or additional amount due for a previous period was \$1,000 or more in the prior calendar year.

5. Liquor or "distilled spirits and wine" tax and administrative fee when the aggregate net amount of tax and fee due in the prior calendar year was \$1,000 or more.

6. Cigarette tax when the net tax due before printing and shipping costs was \$1,000 or more in the prior calendar year.

7. Tobacco products tax when the tax due in the prior calendar year was \$1,000 or more.

8. Alternate fuels tax when the total tax due in the prior calendar year was \$1,000 or more.

9. General aviation fuel tax when the tax due in the prior calendar year was \$1,000 or more.

10. Motor vehicle fuel tax and petroleum inspection fee when the aggregate amount due in the prior calendar year was \$1,000 or more.

11. Individual and fiduciary income tax estimated tax payments when the estimated tax payments as required under s. 71.09, Stats., were \$2,000 or more in the prior taxable year.

12. Installment agreement payments on overdue tax accounts, if at least one of the following requirements is met:

a. The initial overdue balance is at least \$2,000.

b. The installment agreement is for more than 2 years in length.

c. The installment agreement was requested by an entity with an active business permit.

d. The installment agreement is for a person with an out-of-state account.

e. The payment history of the account dictates that it would be in the department's best interest to require EFT.

13. Income and franchise tax withholding payments of pass-through entities under s. 71.775, Stats., and composite individual income tax payments made by pass-through entities on behalf of their nonresident partners or shareholders.

14. Withholding by an employer of the delinquent tax of an employee under s. 71.91 (7), Stats.

15. Local exposition tax when the general, county, and stadium sales and use tax is required to be paid using EFT, as provided in subd. 3.

16. Premier resort area tax when the general, county, and stadium sales and use tax is required to be paid using EFT, as provided in subd. 3.

17. Rental vehicle fee when the general, county, and stadium sales and use tax is required to be paid using EFT, as provided in subd. 3.

18. Dry cleaning facility fee when the general, county, and stadium sales and use tax is required to be paid using EFT, as provided in subd. 3.

(b) Any person not required to use the EFT payment method under par. (a) may elect to use the EFT payment method to pay or deposit the taxes, fees, or other amounts specified in par. (a).

(c) The department shall provide notification when EFT payments or deposits are required.

(5) EFT PAYMENT PROCEDURES. EFT payments or deposits shall be credited by the department directly to the payer's tax account or, for amounts described in sub. (4) (a) 14., to the employee's delinquent tax account. The payer may use the ACH debit or ACH credit transfer option, or both, as follows:

(a) *ACH debit transfers.* 1. ACH debit transfers shall be made using department approved methods or as otherwise prescribed by the department. Required payment information includes the tax type code for the tax being paid, the tax period date to which the payment should be applied, the amount of the payment, and the effective date of the payment.

2. The payer shall initiate ACH debit transfers before 4:00 p.m. central standard time or central daylight savings time, as applicable, on or before the last business day prior to the prescribed due date of the payment in order for the payment to have a settlement date on or before the prescribed due date.

(b) *ACH credit transfers.* 1. A payer shall initiate ACH credit transfers through the payer's financial institution following directions specific to that financial institution.

2. In order for the payment to have a settlement date on or before the prescribed due date, ACH credit transfers shall be initiated in time for the payer's financial institution to settle the funds transfer on or before the due date of the payment.

(6) COSTS TO INITIATE EFT. (a) ACH debit transfers shall occur at no cost to the payer.

(b) Payers using ACH credit transfers are liable for any fees charged by the payer's financial institution.

(7) EVIDENCE OF EFT PAYMENT. A payer receives a trace number or confirmation number for each EFT transaction. The trace number or confirmation number given to the payer during the EFT transaction and included as part of the ACH entry is the payer's confirmation of payment or deposit and shall provide proof of the date and amount of the payment or deposit.

(8) DUE DATE OF EFT PAYMENT. (a) In order for EFT payments and deposits to be considered received on or before the prescribed due date, EFT payments or deposits shall have a settlement date on or before the prescribed due date, or the revised due date as provided in par. (c), of the payment or deposit.

(b) Payments or deposits made by EFT with a settlement date later than the prescribed due date or revised due date of the payment or deposit shall be considered late and shall be subject to all applicable late fees, penalties and interest.

Note: See s. Tax 2.67 (4) for rules applicable to a combined group with respect to late fees, penalties, and interest.

(c) When the prescribed due date falls on a weekend, legal holiday, or day the Federal Reserve Bank is closed, the payment due date is revised to be the first business day immediately following the weekend, holiday, or day the Federal Reserve Bank was closed.

Example: The prescribed due date falls on a Monday that is also Memorial Day. An ACH debit transfer must be initiated before 4:00 p.m. of the preceding Friday, so that the transfer may have a settlement date on Tuesday, the revised due date. A payer using an ACH credit transfer must work with the financial institution to initiate the transfer in time to settle on or before the revised payment due date.

(9) EXCEPTION TO EFT REQUIREMENT. (a) The secretary of revenue may waive the requirement to use the EFT payment method when the secretary determines that the requirement causes an undue hardship, if the person otherwise required to use EFT does all of the following:

1. Requests the waiver in writing using Form EFT-102, *Electronic Filing or Electronic Payment Waiver Request*.

Note: Form EFT-102 should be e-mailed to DORWaiverRequest@revenue.wi.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>, under either "Tax Return Information" or "Tax Return Guidelines."

2. Clearly indicates why the requirement causes an undue hardship.

3. Is current in all return and report filings and tax payments.

(b) In determining whether the EFT requirement causes an undue hardship, the secretary of revenue may consider the following factors:

1. Unusual circumstances which may prevent the payer from using the EFT method.

Examples: Examples of unusual circumstances include:

1) The person does not have access to a telephone or computer.

2) The person is physically unable to use a telephone or computer.

3) The telephone system available to the person is incompatible with the department's telephone system used for EFT payments, deposits, or both.

2. Any other factor which the secretary determines is pertinent.

Note: Section Tax 1.12 interprets 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.

History: Cr. Register, September, 1999, No. 525, eff. 10-1-99; CR 04-049: am. (4) (a) (intro.), cr. (4) (a) 12. Register April 2005 No. 592, eff. 5-1-05; emerg. cr. (3) (fm) and (4) (a) 13., am. (4) (a) (intro.) and (7) (a) 2., eff. 12-28-05; CR 06-001: cr. (3) (fm) and (4) (a) 13., am. (4) (a) (intro.) and (7) (a) 2. Register June 2006 No. 606, eff. 7-1-06; CR 07-027: am. (1), (2), (3) (g), (4) (a) (intro.), (b) and (7) (intro.), cr. (4) (a) 14., Register October 2007 No. 622, eff. 11-1-07; CR 10-095: cr. (3) (cg), (cr), (4) (a) 15. to 18., (c), am. (3) (d), (4) (a) (intro.), 1. to 11., 12. (intro.), 13., r. (5), (6), renum. (8), (10) to be (6), (8), renum. (7), (9), (11) to be (5), (7), (9) and am. Register

November 2010 No. 659, eff. 12-1-10; CR 12-014: am. (8) (c) Register August 2012 No. 680, eff. 9-1-12.

Tax 1.13 Power of attorney. (1) POWER OF ATTORNEY. (a) A power of attorney or other written authorization executed by the taxpayer shall be required by the Wisconsin department of revenue for the taxpayer's representative, on behalf of the taxpayer, to:

1. Inspect confidential information, e.g., tax returns and audit reports.

2. Receive notices, assessments, determinations, redeterminations, tax forms, billings, refunds, communications and correspondence containing confidential information.

3. Represent the taxpayer at conferences.

4. Execute a waiver to extend the statutory period for assessment or collection of a tax.

5. Execute any other waivers or agreements in behalf of the taxpayer.

(b) The power of attorney requirement applies to income, franchise, alternative minimum, withholding, gift, sales and use, county sales and use, inheritance, 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.

(c) A power of attorney or other written authorization executed by a designated agent of a combined group is considered executed by each member of the combined group with respect to combined returns within the scope of the power of attorney or other written authorization.

(2) EXCEPTIONS. (a) A power of attorney is not required for a taxpayer's representative to inspect confidential information or to represent the taxpayer at conferences, if the representative is accompanied by the taxpayer or, if a corporation, by an officer or authorized employee of the corporation.

(b) Generally a power of attorney is not required in the case of a trustee, receiver, guardian, administrator or executor of an estate, or a representative appointed by a court.

(3) FILING OF POWER OF ATTORNEY. (a) One power of attorney form shall be filed with the Wisconsin department of revenue, with one additional copy for each additional tax matter.

(b) One power of attorney form shall be filed in each office of the department in which the taxpayer's representative, in connection with the matter under consideration, intends performing one or more of the acts enumerated in sub. (1).

(4) FORM OF POWER OF ATTORNEY. (a) Power of attorney forms are 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) 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 gift tax, covered and the tax year or period to which it relates.

Note: Forms may be obtained from the department of revenue's web site at www.revenue.wi.gov.

Note: Section Tax 1.13 interprets 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.

History: Cr. Register, February, 1978, No. 266, eff. 3-1-78; am. (1) (b), Register, September, 1983, No. 333, eff. 10-1-83; am. (1) (a) 1. and (b), (3) (a) and (4), Register, July, 1987, No. 379, eff. 8-1-87; am. (1) (a) 2. and (b), (2) (b), (3) (a) and (4) (b), Register, February, 1990, No. 410, eff. 3-1-90; CR 10-095: cr. (1) (c), am. (4) (a) Register November 2010 No. 659, eff. 12-1-10.

Tax 1.14 Petition for redetermination. (1) SCOPE. A person feeling aggrieved by a notice of additional assessment of income, franchise, withholding, state, county or stadium sales or

use, premier resort area, local exposition, motor vehicle fuel, alternate fuels, general aviation fuel, fermented malt beverages, liquor, cigarette, tobacco products or controlled substances tax or petroleum inspection, state rental vehicle or dry cleaning fee, by a notice of reduced homestead, farmland preservation or other credits, or by a notice of refund or denial of refund may petition the department for redetermination. This section describes the administrative provisions related to the petition for department redetermination.

(2) **FORMAT OF THE PETITION.** The petition for redetermination shall be in writing and shall set forth clearly and concisely the specific grievances to the assessment, reduced credit, refund or denial of refund, including a statement of the relevant facts and propositions of law upon which the grievance is based. Every petition shall be signed by the taxpayer or by a duly authorized representative.

(3) **FILING DEADLINE.** (a) To be considered “timely filed” a petition for redetermination shall be filed within 60 days after receipt of a notice of additional assessment, reduced credit, refund or denial of refund. Except as provided in par. (b), a petition for redetermination is “filed” within the proper statutory 60-day time period only if it is actually received by the department, or at the destination that the department prescribes, within the 60-day period, or it is mailed in a properly addressed envelope, with postage prepaid, the envelope is postmarked before midnight of the 60th day and the petition is actually received by the department, or at the destination that the department prescribes, within 5 business days of the prescribed 60th day date.

(b) In lieu of being received by the department or at a destination prescribed by the department, a petition for redetermination may be received at a destination prescribed by the department of administration if the petition for redetermination relates to a notice of additional assessment, reduced credit, refund or refund denial of income, franchise, withholding, motor vehicle fuel, alternate fuels, general aviation fuel, fermented malt beverages, liquor, cigarette, tobacco products or controlled substances tax, homestead, farmland preservation or other credit or state rental vehicle fee.

(4) **DEPOSIT OR PAYMENT.** (a) *Deposit.* Any person who files a petition for redetermination may elect to deposit the amount of additional assessment, including interest and penalty, with the department, or with a person that the department prescribes, at any time before the department makes its redetermination. Any deposited amount that is later refunded shall bear interest at the statutory rate.

(b) *Payment.* A person may also pay any portion of the assessment admitted to be correct together with interest computed to the date of payment. However, the payment shall be considered an admission that the paid portion of the assessment is correct. The admitted portion that is paid may not be recovered in an appeal or in any other action or proceeding.

(5) **INFORMAL CONFERENCE.** A taxpayer may request in a petition for redetermination or at any time before the department has acted on the petition, an informal conference at which the facts and issues involved in the assessment or determination may be discussed. The conference shall be held at a time and place determined by the department.

(6) **CLOSING STIPULATIONS.** If the informal conference specified in sub. (5) results in an agreement as to facts and issues and the applicable law, the taxpayer and the department may enter into a closing stipulation.

(7) **COMBINED GROUPS.** To the extent a notice of additional assessment of income or franchise tax, or any other notice under sub. (1), results from amounts required to be included in a combined return under s. 71.255, Stats., any act described in this section which is executed by the designated agent of the combined group is considered an act executed by all members of the combined group.

Note: Section Tax 1.14 interprets ss. 66.0615 (1m) (f) 2., 71.255 (7) (b), 71.80 (18), 71.88 (1), 71.90 (1), 77.59 (6), 77.61 (14), 77.76 (2), 77.982 (2), 77.991 (2), 77.9941 (4), 77.9951 (2), 77.9964 (2), 78.67, 78.69, 139.094, 139.11 (2m), 139.355, 139.38 (2m), 139.83, 139.835, and 168.12 (9), Stats.

History: 1–2–56; am. Register, February, 1975, No. 230, eff. 3–1–75; am. Register, July, 1978, No. 271, eff. 8–1–78; renum. (1) and (2) to be (2) and (3) and am., cr. (1) and (4), (5) and (6) renum. from Tax 3.92 and 3.93 and am., Register, June, 1990, No. 414, eff. 7–1–90; CR 02–033; renum. from Tax 3.91 and am. Register October 2002 No. 562, eff. 11–1–02; CR 10–095; cr. (7) Register November 2010 No. 659, eff. 12–1–10.

Tax 1.15 Enforcement of rules against a small business that has committed a minor violation. (1) **PURPOSE.**

This section discloses the discretion the department will follow in the enforcement of rules against a small business that has committed a minor violation.

(2) **DEFINITIONS.** In this section: (a) “Minor violation” has the meaning given in s. 227.04 (1) (a), Stats.

(b) “Small business” has the meaning given in s. 227.114 (1), Stats.

(3) **DISCRETION THE DEPARTMENT WILL FOLLOW.** The enforcement of rules against a small business that has committed a minor violation, including the assessment of a penalty, forfeiture, fine, or interest, shall be done on a case-by-case basis. Each case shall be determined on its merits as evaluated by the department, taking into consideration all relevant factors. Factors shall include:

(a) The difficulty and cost of compliance with the rule by the small business.

(b) The financial capacity of the small business, including the ability of the small business to pay the amount of any penalty that may be imposed.

(c) The compliance options available, including options for achieving voluntary compliance with the rule.

(d) The level of public interest and concern.

(e) The opportunities available to the small business to understand and comply with the rule.

(f) Fairness to the small business and to other persons, including competitors and the public.

(4) **SCOPE OF DISCRETION ALLOWED.** The department shall allow the discretion described in sub. (3) to be considered in all situations in which a small business has committed a minor violation, except in a situation where any of the following apply:

(a) The violation results in a substantial economic advantage for the small business.

(b) The small business has violated the same rule or guideline more than 3 times in the past 5 years.

(c) The violation may result in an imminent endangerment to the environment, or to public health or safety.

(5) **VOLUNTARY DISCLOSURE.** The department encourages a small business that has committed a minor violation to voluntarily disclose the minor violation. On a case-by-case basis, considering all relevant factors, the department may exercise discretion to:

(a) Enter into a written agreement with the small business that restricts the statute of limitations.

(b) Waive penalties.

(c) Reduce the number of periods for which returns shall be filed.

Note: Section Tax 1.15 interprets s. 227.04, Stats.

History: CR 06–087; cr. Register November 2006 No. 611, eff. 12–1–06; CR 16–046; am. (title), (1), r. and recr. (2) to (4), am. (5) (intro.) Register January 2018 No. 745, eff. 2–1–18.

Tax 1.16 Financial record matching program.

(1) **PURPOSE.** The purpose of this section is to specify procedures under which the department shall enter into agreements with financial institutions doing business in this state to operate the financial record matching program under s. 71.91 (8), Stats.

(2) **DEFINITIONS.** In this section:

(a) Pursuant to s. 71.91 (8) (a) 1., Stats., “account” means a demand deposit account, checking account, negotiable with-

drawal order account, savings account, time deposit account, or money market mutual fund account.

(b) "Financial institution" has the meaning given in s. 49.853 (1) (c), Stats.

(3) PROCEDURES. (a) A financial institution doing business in this state shall enter into an agreement with the department to participate in the exchange of data on a quarterly basis. To the extent feasible, the information required under this agreement shall be submitted by electronic means prescribed by the department. The financial institution shall sign the agreement and return the agreement to the department within 20 business days of receipt of the agreement. The department shall review the agreement and, if all conditions have been met, shall sign the agreement and provide the financial institution with a copy of the signed agreement. Any changes to the conditions of the agreement shall be submitted by the financial institution or the department at least 60 days prior to the effective date of the change.

(b) A financial institution shall elect one of the following options for the exchange of data described in par. (a):

1. 'State matching option.' This option is also known as the "all accounts method." If this option is elected, the agreement described in par. (a) shall include the following:

a. The financial institution agrees to provide an electronic file to the department or department's agent on a quarterly basis. The file contains the name, social security number or federal employer identification number of all persons having an ownership interest in an account maintained at the financial institution, together with a description of each person's interest.

b. The department or department's agent will perform a match against the delinquent debtor file. Upon the request of the department or the department's agent, the financial institution shall provide the department, for each delinquent debtor who matches information provided by the financial institution under subd. 1. a., the delinquent debtor's address of record, account number, account type and the balance of the account.

c. The department or department's agent agrees not to disclose or retain information received from the financial institution concerning account holders who are not delinquent debtors.

2. 'Financial institution matching option.' This option is also known as the "matched accounts method." If this option is elected, the agreement described in par. (a) shall include the following:

a. The department or department's agent agrees to provide the financial institution an electronic file on a quarterly basis. The file contains the names and social security numbers or federal employer identification numbers of delinquent debtors.

b. The financial institution agrees to return a file of matched records to the department or department's agent. The return file of matched records contains the delinquent debtor's name, social security number or federal employer identification number, address of record, account number, account type, the nature of the delinquent debtor's ownership interest in the account and the balance of the account at the time that the record match is made.

c. The financial institution agrees not to disclose or retain information received from the department or the department's agent concerning information contained in the delinquent debtor file in accordance with s. 71.91 (8) (e), Stats.

(c) A financial institution may request reimbursement from the department for costs associated with participating in the financial record matching program in an amount not to exceed \$125 for each calendar quarter that the financial institution participates in the program.

History: EmR0935: emerg. cr. eff. 5-20-10; CR 09-118: cr. Register June 2010 No. 654, eff. 7-1-10.

Tax 1.17 Ambulatory surgical center assessment.

(1) PURPOSE. The purpose of this section is to establish procedures and other requirements necessary for levying and collecting

the ambulatory surgical center assessment imposed under s. 146.98, Stats.

Note: Section 146.98, Stats. was repealed by 2017 Wisconsin Act 59, effective 9-23-17. Section Tax 1.17 will be repealed by the Department of Revenue in future rulemaking.

(2) DEFINITIONS. In this section:

(a) "Ambulatory surgical center" has the meaning given in s. 146.98 (1), Stats.

(b) "Cash basis" is the method of accounting where income is reported in the year that it is actually or constructively received in the form of cash or its equivalent or other property.

(c) "Department" means the department of revenue.

(d) "Gross patient revenue" means the gross amount received on a cash basis by the ambulatory surgical center from all patient services.

(e) "Patient services" include any of the following goods and services provided to a patient or consumer:

1. Bed and board.
2. Nursing services and other related services.
3. Use of the ambulatory surgical center.
4. Medical social services.
5. Drugs, biologicals, supplies, appliances and equipment.
6. Other diagnostic or therapeutic items or services.
7. Medical or surgical services.
8. Laboratory services.
9. Items and services furnished to ambulatory patients not requiring emergency care.
10. Emergency services including ambulance services.

(3) REGISTRATION. (a) Ambulatory surgical centers in this state shall register with the department, in the manner prescribed by the department.

(b) On or before January 1, ambulatory surgical centers in this state shall notify the department of a change in ownership, address change; the date the ambulatory surgical center commences or ceases operations, and any other information pertinent to the ambulatory surgical center's assessment under s. 146.98, Stats., occurring in the previous calendar year. The department may register or modify registration for an ambulatory surgical center based on the information provided under this paragraph.

(c) The department may register or modify registration for an ambulatory surgical center based on information specified in par. (b) received from the department of health services.

(4) ANNUAL GROSS PATIENT REVENUE SURVEY. (a) The department shall annually survey ambulatory surgical centers required to be registered under sub. (3) (a) to obtain any data required by the department to administer the assessment imposed in s. 146.98, Stats. Survey data filed shall be subject to the confidentiality provisions under s. 71.78, Stats.

(b) Ambulatory surgical centers shall electronically file the survey annually on or before March 15.

(c) Ambulatory surgical centers may apply for a 5 day extension of the survey due date. An extension will be granted for good cause only. The application for an extension shall be filed electronically with the department on or before March 15 at <https://tap.revenue.wi.gov>.

(d) Failure to electronically file the survey with the department by the due date, including any extension, shall result in a late filing penalty of \$500 per day calculated from the day after the unextended due date up to, but not including, the date the completed survey is received by the department, or April 1, whichever is earlier. Failure to file the survey during the period for the extension shall make the extension null and void.

Examples: 1) An ambulatory surgical center does not request an extension to file the annual survey and fails to file the survey by April 1, 2010. A daily \$500 late filing penalty is assessed for the period of March 16, 2010 through March 31, 2010, for a total late filing penalty of \$8,000.

2) An ambulatory surgical center is granted an extension, and files the annual survey on March 19, 2010. No late filing penalty is assessed.

3) An ambulatory surgical center is granted an extension to file the annual survey, but files the survey on March 24, 2010, after the expiration of the 5 day extension. A \$4,000 late filing penalty is assessed for the period of March 16, 2010 through March 23, 2010.

(e) If an ambulatory surgical center fails to file the survey by April 1, or files an incomplete or incorrect survey, the department shall impose the assessment based upon the information in the department's possession and according to its best judgment. This may include the use of data received from the ambulatory surgical center for prior periods.

(f) A penalty of 25% of the amount of the assessment may be added to an assessment imposed under par. (e), if the ambulatory surgical center fails to file a survey by April 1, pursuant to s. 146.98 (3) (e), Stats.

(g) An ambulatory surgical center may electronically file an amended survey to modify previously filed survey information. The deadline for filing an amended survey is April 1.

(5) ASSESSMENT. (a) The assessment shall be calculated using a uniform percentage that satisfies the requirements under 42 CFR 433.68 for collecting an assessment without incurring a reduction in federal financial participation under the federal Medicaid program.

(b) The department shall electronically notify an ambulatory surgical center of the amount of the assessment on April 15.

(c) The assessment shall be paid electronically on or before June 1 of each year in a manner prescribed by the department.

(d) At the discretion of the department, an ambulatory surgical center that is unable to timely pay the assessment due June 1, 2010, may be granted an extension of the due date to June 22, 2010. This extension is only available for the payment that is due June 1, 2010. A determination by the department to not grant an extension is final and is not subject to review under ch. 227, Stats.

(e) Failure to pay the assessment by the due date, including any extension, shall result in a penalty of \$500 per day calculated from the day after the due date up to, but not including, the date the assessment is received by the department, subject to a maximum penalty equal to the amount of the assessment. Payment of the penalty under this paragraph does not relieve the ambulatory surgical center from the responsibility of paying the assessment.

(f) The department may require estimated pre-payment of the assessment, in a manner prescribed by the department. The department shall notify ambulatory surgical centers at least 90 days before the first estimated pre-payment is due.

(6) AUDIT. (a) The department may conduct an office or field audit to determine the assessment under s. 146.98, Stats., or to ascertain the correctness of the information reported on the annual survey required to be filed under sub. (4) (b).

(b) Ambulatory surgical centers shall retain financial books and records that support the information reported on the annual survey, for a minimum period of four years after the March 15 due date of the survey required to be filed under sub. (4) (b), and provide it to the department pursuant to s. 146.98 (3) (c), Stats., if requested.

(c) The department may impose a penalty equal to the amount of any unreported gross patient revenue multiplied by the percentage established for that period in sub. (5) (a).

(7) APPEALS. Ambulatory surgical centers claiming to be adversely affected by the department's action or inaction, other than a rulemaking action or proposal for legislation, may petition the department for a contested case hearing under s. 227.42, Stats. The request for hearing shall be in writing and served upon the secretary of revenue within 30 days after the department's action or inaction as stated in the petition.

Note: Written requests for hearing should be addressed to: Wisconsin Department of Revenue, Office of the Secretary, P.O. Box 8933, Madison, WI 53708.

(8) COLLECTIONS. (a) Assessments under sub. (5) (c) are considered delinquent if not paid when due, unless the department receives a request for hearing under sub. (7).

(b) The department may immediately proceed to collect delinquent assessments, including any penalties, in a manner comparable to that described in s. 77.62, Stats.

(c) Assessments unpaid for more than 90 days after appeal rights have expired shall be posted on the list on the Internet site maintained by the department under s. 73.03 (62), Stats.

History: EmR1002: emerg. cr. eff. 1-19-10; CR 10-005: cr. Register July 2010 No. 655, eff. 8-1-10.

Note: Section 146.98, Stats. was repealed by 2017 Wisconsin Act 59, effective 9-23-17. Section Tax 1.17 will be repealed by the Department of Revenue in future rulemaking.