

Clearinghouse Rule 23-028
STATE OF WISCONSIN
DEPARTMENT OF REVENUE

PROPOSED ORDER OF THE DEPARTMENT OF REVENUE ADOPTING RULES

Proposed Order

The Wisconsin Department of Revenue proposes an order to: create **Ch. Tax 10** relating to unclaimed property.

Analysis by the Department of Revenue

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.

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.

Summary of comments received during preliminary comment period and public hearing on the statement of scope: No preliminary public hearing was requested and no comments from the public were received on the statement of scope (SS 033-22).

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)).

Iowa, Michigan, and Minnesota's rules do not address virtual currency because they have not updated their unclaimed property laws to include newer forms of property, such as virtual currency.

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 affecting small business. The department recognizes there may be an economic advantage or disadvantage to the owner (mostly individuals) of the virtual currency if the value of the virtual currency increases or decreases between liquidation by the holder (mostly businesses) and remittance to DOR in U.S. currency.

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: Current law requires holders of unclaimed property to convert abandoned virtual currency to U.S. currency. Holders could be held liable from property owners if the value of the virtual currency fluctuates between the time it is converted to U.S. currency and delivered to the department, unless the property is delivered in good faith to the department. This rule provides certainty to small businesses that hold unclaimed property in that they may not be held liable by the property owner if the holder converts the virtual currency to U.S. currency within the time period specified prior to remitting to the department. As a result, the department does not believe there will be an economic effect on small businesses.

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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Text of Rule

SECTION 1. Chapter Tax 10 is created to read:

Chapter Tax 10

UNCLAIMED PROPERTY

Tax 10.01 VIRTUAL CURRENCY.

(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 required under s. 177.0401, Stats.

(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 2. 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.

End Rule Text